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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~100.~~ 120

THE FIRST NATIONAL BANK OF DECATUR, ILLINOIS, PLAINTIFF IN ERROR,

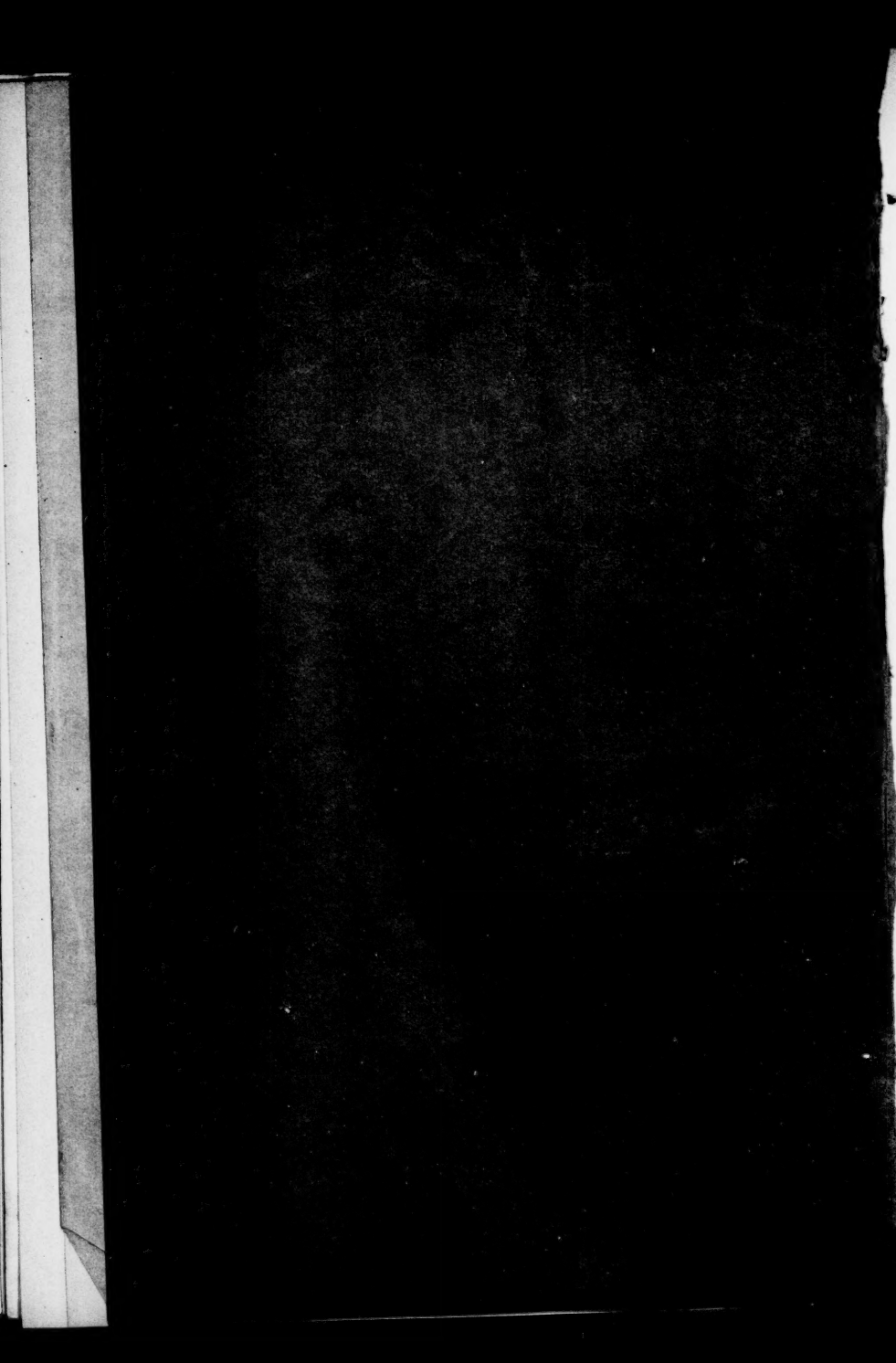
vs.

THE HOME SAVINGS BANK OF SAINT LOUIS, MISSOURI.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF ILLINOS.

FILED JANUARY 18, 1873.

C. D. 1873



SUPREME COURT OF THE UNITED STATES.

No. 400.

THE FIRST NATIONAL BANK OF DECATUR, ILLINOIS, PLAINTIFF IN ERROR,

vs.

THE HOME SAVINGS BANK OF SAINT LOUIS, MISSOURI

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF ILLINOIS.

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1 Pleas in the circuit court of the United States of America for the southern district of Illinois, held at the city of Springfield, in said district, before the Hon. Samuel H. Treat, district judge of said district, and in the absence of the Hon. Thomas Drummond, judge of the seventh judicial circuit, and pro tempore sole judge of said circuit, on the ninth day of July, at the June term of said court, in the year of our Lord one thousand eight hundred and seventy-two, and of our Independence the ninety-seventh year.

J. A. JONES,
Clerk.

HOME SAVINGS BANK OF ST. LOUIS, MISSOURI,
vs.
FIRST NATIONAL BANK OF DECATUR, ILLINOIS. } In assumpsit.

SOUTHERN DISTRICT OF ILLINOIS, *ss:*

Home Savings Bank of St. Louis, Missouri, a corporation located and doing business in the State of Missouri, plaintiff, puts in its place
2 Messrs. E. L. and W. L. Gross and N. M. Broadwell, esq'r, its attorneys, against First National Bank of Decatur, Illinois, a corporation located and doing business in said southern district of the State of Illinois, defendant, who puts in its place Messrs. Crea and Ewing, its attorneys, in a plea of trespass on the case upon promises.

SOUTHERN DISTRICT OF ILLINOIS, *ss:*

Be it remembered that heretofore, to wit, on the twenty-first day of December, in the year of our Lord one thousand eight hundred and seventy-one, came said plaintiffs by its said attorneys and filed in the clerk's office of said court its bond for costs herein, which said bond for costs is in the words and figures following, to wit:

Bond for costs.

Circuit court, January term, A. D. 1872.

UNITED STATES OF AMERICA,
Southern District of Illinois, ss:
HOME SAVINGS BANK OF ST. LOUIS
vs.
FIRST NATIONAL BANK OF DECATUR, ILLINOIS. } In assumpsit.

3 I do hereby enter myself security for costs in this cause, and acknowledge myself bound to pay, or cause to be paid, all costs which may accrue in this action, either to the opposite party or to any of the officers of this court, in pursuance of the laws of this State and of the United States.

Dated this 21st day of December, 1871.

FRANK W. TRACY.

(Indorsed:) Filed December 21, A. D. 1871. J. A. Jones, clerk.

And afterwards, to wit, on said twenty-first day of December, of the year aforesaid, a summons was issued in said cause out of the clerk's office of said court, directed and delivered to the marshal of said district to execute, which said summons is in the words and figures following, to wit:

Summons.

Circuit court of the United States of America, southern district of Illinois, *ss:*

The United States of America to the marshal of the southern district of Illinois, greeting:

We command you to summon First National Bank of Decatur, Illinois, if found in your district, to be and appear before our judges of our circuit court of the United States for the southern district of
4 Illinois, on the first day of the next term thereof, to be held at Springfield, in the district aforesaid, on the first Monday of January, A. D. 1872, to answer unto Home Savings Bank of St. Louis, Missouri, of a plea of trespass on the case on promises, to its damage, as it alleges, of ten thousand dollars, and have you then and there this writ.

Witness the Hon. Salmon P. Chase, Chief Justice of the Supreme Court of the United States of America, at Springfield aforesaid, this 21st day of December, in the year of our Lord one thousand eight hundred and seventy-one, and of our Independence the ninety-sixth year.

[L. S.] J. A. JONES,
Clerk.

Which said summons was afterwards, to wit, on the thirtieth day of said December of the year aforesaid, returned by the marshal of said district indorsed as follows, to wit:

I hereby appoint Franklin W. Hardy my special deputy to execute this writ, Dec. 21, 1871.

E. R. ROE,
U. S. Marshal.

Executed this writ on the 22d day of Dec., 1871, by reading and delivering a true copy of the same to William L. Hammer, presi-
5 dent of the within mentioned First National Bank of Decatur.

E. R. ROE, *U. S. Marshal,*
By FRANKLIN W. HARDY,
Special Deputy.

(Indorsed:) Filed December 30, A. D. 1871. J. A. Jones, clerk.

Then afterwards, to wit, on the first day of January, in the year of our Lord one thousand eight hundred and seventy-two, came again said plaintiff by its attorneys and filed in the clerk's office of said court its declaration and copy of account, which said declaration and copy of account are in the words and figures following, to wit:

Declaration.

UNITED STATES OF AMERICA,
Southern District of Illinois, ss:

Of the January term of this circuit court of the United States within and for said district, A. D. 1872.

The Home Savings Bank of Saint Louis, a body corporate, &c., and a citizen of the State of Missouri, the plaintiff in this suit, complains of the First National Bank of Decatur, Illinois, a body corporate, &c., and

a citizen of the State of Illinois, the defendant in this suit, of a
6 plea of trespass on the case on promises—

For that whereas heretofore, to wit, on the 21st day of September, A. D. 1869, and before & since then, at St. Louis, Missouri, said plaintiff was carrying on a general banking business, and in that line of business had and possessed good credit in the commercial world: and for that whereas the said defendant was at the same time, and afterwards, engaged in the like business of banking, at Decatur, Illinois, and the said defendant, in the prosecution of its said business, being desirous of giving credit and currency to the drafts of one P. E. Frederick, a trader, &c., drawn on one J. S. Talmadge, of Chicago, Illlnois, did on or about the 21st day of September, A. D. 1869, at Decatur, Illinois, by and through its cashier, J. H. Livingston, execute and deliver to said plaintiff the following written guaranty or letter of credit, to wit:

"Capital paid in, $100,000.

"FIRST NATIONAL BANK OF DECATUR, ILLINOIS.

"WM. L. HAMMER, *President.* J. H. LIVINGSTON, *Cashire*

"DECATUR, *Ill*, 9–21, 1869.

"H. C. PIERCE, Esq., *Cash., St. Louis, Mo.:*

7 "DEAR SIR: Your favor of the 18th is received. Yes; we guarantee you on Frederick's drafts on Talmadge for $10,000 for 30 days from Sept. 13, '69. Yours respectfully,

"J. H. LIVINGSTON."

And for that whereas, also, the said defendant, in the further prosecution of its said business, being still desirous of giving further credit and currency to like drafts of said Frederick, drawn as aforesaid, did, on or about the 20th day of October, A. D. 1869, at Decatur, Illinois, by and through its said cashier, make and execute and deliver unto said plaintiff, while carrying on its business as aforesaid, the following guaranty or letter of credit, to wit:

"Capital paid in, $100,000.

"FIRST NATIONAL BANK OF DECATUR, ILLINOIS.

"WM. L. HAMMER, *President.* J. H. LIVINGSTON, *Cashier.*

"DECATUR, *Ill.*, 10–20, 1869.

"H. C. PIERCE, Esq., *Cash., St. Louis, Mo.:*

8 "DEAR SIR: The guarantee given for Mr. Frederick please consider extended for 30 days from expiration.

"Yours &c.,

"J. H. LIVINGSTON."

And for that whereas, also, the said defendant, in the further prosecution of its said business, and for the purpose of obtaining credit and currency for like drafts of said Frederick, drawn as aforesaid, did, on or about the 22d day of November, A. D. 1869, at Decatur, Illinois, by and through its said cashier make, execute, and deliver unto said plaintiff, while carrying on its business as aforesaid, another guaranty, or letter of credit, in the words and figures following, to wit:

"Capital paid in, $100,000.

"FIRST NATIONAL BANK OF DECATUR, ILLINOIS.

"WM. L. HAMMER, *President.* J. H. LIVINGSTON, *Cashier.*

"DECATUR, *Ill.*, 11—22, 1869.

"S. H. PIERCE, Esq.,
Cash., Home Savings Bank, St. Louis, Mo.:

9 "SIR: The letter of credit given you for Mr. Frederick is hereby extended for thirty days from expiration last date.

"Respectfully,

"J. H. LIVINGSTON, *Cr.*"

And the said plaintiff says that on or about the 10th day of December, A. D. 1869, at St. Louis, Mo., the said Frederick made his two several drafts on said Talmadge in the words and figures following, to wit:

"$4,000 & ex. ST. LOUIS, *Dec. 10th*, 1869.

"One day after date pay to the order of myself four thousand dollars, with crt. rate of ex. on N. Y., value received, and charge the same to account of

"Yours, respectfully,

"P. E. FREDERICK.

"To J. S. TALMADGE, Esq.,
141 *La Salle st., Chicago, Ills.*"

"$3,650 & ex. ST. LOUIS, *Dec. 10th*, 1869.

"One day after sight pay to the order of myself thirty-six hundred & fifty dollars, with crt. rate of ex. on N. Y., value received, and charge the same to account of

"Yours, respectfully,

"P. E. FREDERICK.

"To J. S. TALMADGE, Esq.,
141 *La Salle st., Chicago, Ills.*"

10 And that the said Frederick, on the date last aforesaid, after making said drafts, applied to said plaintiff at its banking-house in St. Louis, Mo., and requested said plaintiff, on the strength of said letters of credit, to* indorse said drafts by way of imparting to them the qualities of credit and currency in the commercial world. And the said plaintiff in fact says that, in consideration of said written guaranties or letters of credit, and relying only on their strength and credit, it did, to wit, on the 10th day of December, A. D. 1869, at its said place of business, by and through its cashier, indorse said drafts, and order the payment thereof to be made to L. V. Parsons, cash., &c. And the said plaintiff further says that said drafts, so indorsed as aforesaid, were never paid by said drawee, or by any one for him, but that the same were duly protested for non-payment and returned and presented to plaintiff as indorser thereof for payment, and the said plaintiff did, upon such return and presentation of said drafts, pay the same to said indorsee, in pursuance of its obligation as indorser thereof. And

*End of first line on "6th page," referred to in amendment to declaration.

11 the said plaintiff further says that, in virtue of the said indorsement of said drafts by said plaintiff, the said Frederick obtained the money thereon, to the amount called for by said drafts respectively, and that said plaintiff was only an accommodation indorser thereof, upon the faith, strength, and credit of said letters of credit, or guaranties, as aforesaid. And the said plaintiff says that, by means of the aforesaid premises, the said defendant became and is liable to pay to said plaintiff the amount of said drafts so paid, as aforesaid, by plaintiff, together with fees for notarial protests of said drafts, as the same, nor any part thereof, has never been paid by said defendant to plaintiff, although often demanded of said defendant, and being so liable the said defendant, to wit, on the day of , at the district aforesaid, undertook and promised said plaintiff to pay the same.* And for that whereas, also, heretofore, to wit, on the 22d day of November, A. D. 1869, at Decatur, Ill., that is to say at said southern district, the said defendant, being in the banking business, and, for purposes of its own, desirous of having credit given to the drafts of one P. E. Frederick, drawn
12 on Talmadge, by and through its cashier, addressed to the said plaintiff a letter of credit in the following words and figures, to wit:

"Capital paid in $100,000.

"FIRST NATIONAL BANK OF DECATUR, ILLINOIS.

"WM. L. HAMMER, *President.* J. H. LIVINGSTON, *Cashier.*

"DECATUR, *Ill.*, 11–22, 1869.

"S. H. PIERCE, Esq., *Cash.*,
Home Savings B'k, St. Louis, Mo.:

"SIR: The letter of credit given you for Mr. Frederick is hereby extended for thirty days from expiration last date.

"Respectfully,

"J. H. LIVINGSTON."

Which said letter of credit was received in due course of mail by said plaintiff, at St. Louis, Mo., the place where plaintiff was then and is now doing a general banking business, and in the enjoyment of good credit in commercial circles. And the said plaintiff avers that within the period of time embraced and intended to be covered by said letter of credit, to wit, on the 10th day of December, A. D. 1869, at St.
13 Louis, Mo., the said Frederick, referred to in and by said letter, made his two several drafts in the words and figures following, to wit:

"$4,000 & ex. ST. LOUIS, *Dec.* 10, 1869.

"One day after date pay to the order of myself four thousand dollars, with crt. rate of ex. on N. Y., value received, and charge the same to account of yours, respectfully,

"P. E. FREDERICK.

"To J. S. TALMADGE, Esq.,
"141 *La Salle st., Chicago, Ills.*"

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*End of "page 7."

"$3,650. ST. LOUIS, *Dec.* 10, 1869.

"One day after sight pay to the order of myself thirty-six hundred & fifty dollars, with crt. rate of ex. on N. Y., value received, and charge the same to account of yours, respectfully,

"P. E. FREDERICK.

"To J. S. TALMADGE, Esq.,
"141 *La Salle st., Chicago, Ills.*"

And that the said Frederick, on the date last aforesaid, to wit, the 10th day of December, 1869, applied to said plaintiff, and requested said plaintiff, in pursuance of said letter of credit, to impart
14 credit and value to said drafts by indorsing the same. And the said plaintiff in fact says that, relying upon the strength and credit of said letter, it did on the 10th day of December, A. D. 1869, to accommodate said defendant, and for no other purpose, and for no other consideration, by and through its cashier, indorse said drafts, and ordered the payment of the same to be made to on' L. V. Parsons. And said plaintiff further says that said drafts, so indorsed as aforesaid by plaintiff, were never paid by said drawer, or by any one for him, but that the same, after being duly presented to him for payment, and payment thereof refused, were duly protested for non-payment and returned and presented to plaintiff as indorser thereof for payment; and the said plaintiff did upon such return and presentation of said drafts pay the same to the full amount called for by them, respectively, in fulfillment of its obligation as indorser thereof, and has never received anything therefor from any quarter; by means whereof the said defendant
15 became liable to pay unto said plaintiff the amount of money so paid on said drafts, to wit, ten thousand dollars, together with notarial fees for protests of said drafts for non-payment; and being so liable, the defendant afterwards, to wit, on the first day of December, A. D. 1871, at said southern district, undertook and promised said plaintiff to pay unto it the said sums of money when requested.

And for that whereas, also, heretofore, to wit, on the 22d day of November, A. D. 1869, at Decatur, Illinoi., that is to say, at said southern district, the said defendant, in furtherance of its business as a banking institution, and for the purpose of giving credit and currency to drafts drawn by one Frederick upon on' Talmadge, by and through its cashier, address, to the said plaintiff a letter of credit in the following words and figures, to wit:

"Capital paid in $100,000.

"FIRST NATIONAL BANK OF DECATUR, ILLINOIS.

"W'M L. HAMMER, *President.* J. H. LIVINGSTON, *Cashier.*

"DECATUR, ILL., 11–22, 1869.

16 "S. H. PIERCE, Esq., *Cash. Home Savings B'k, St. Louis, Mo.:*

"SIR: The letter of credit given you for Mr. Frederick is hereby extended for thirty days from expiration last date.

"Respectfully,

"J. H. LIVINGSTON, *Cr.*"

Which said letter of credit was received in due course of mail by said plaintiff, at St. Louis, Mo., where plaintiff was then and is now doing a

banking business. And the said plaintiff avers that the said letter of credit mentioned and referred to by said defendant in the letter last aforesaid was dated September 21st, A. D. 1869, which by its terms authorized and requested plaintiff to give credit to the drafts of one Frederick upon one Talmadge, to the extent of ten thousand dollars for thirty days from September 13th, 1869, and that said defendant did by letter, dated October 10th, 1869, addressed to and received by plaintiff in due course of mail, continue the said letter of September 13th for
17 thirty days from the expiration of the period of thirty days in said letter of the 13th of September specified, and that in and by said letter of the 22d of November said period of thirty days was further extended for a like period of thirty days. And the said plaintiff avers that within the period of time embraced in and intended to be covered by said letter of credit dated November 22d, 1869, to wit, on the 10th day of December, A. D. 1869, at St. Louis, Mo., the said Frederick made his two several drafts in the words and figures following, to wit:

"$4,000 & ex. ST. LOUIS, *Dec. 10th*, 1869.

"One day after date pay to the order of myself four thousand dollars, value received, and charge the same to account of

"Yours, respectfully,

"P. E. FREDERICK.

"To J. S. TALMADGE, Esq.,
"141 *La Salle st., Chicago, Ill.*"

"$3,650 & ex. ST. LOUIS, *Dec. 10th*, 1869.

"One day after sight pay to the order of myself thirty-six hundred and fifty dollars, value received, and charge the same to account of
18 "Yours, respectfully,

"P. E. FREDERICK.

"To J. S. TALMADGE, Esq.,
"141 *La Salle st., Chicago, Ill.*"

Which said drafts the said Frederick did, on the 10th day of December, A. D. 1869, present to said plaintiff, and request plaintiff, in pursuance of said letter of credit, dated November 22d, &c.,* to indorse said drafts, to the end that he, Frederick, might obtain the money thereon; and the said plaintiff in fact says that, relying solely on the strength and credit of said letter, dated November 22d, it did on the 10th day of December, A. D. 1869, by and through its cashier, indorse said drafts, (the said Frederick having first indorsed said drafts,) and by said indorsement plaintiff ordered the payment of said drafts to be made to one L. V. Parsons, and that by reason of plaintiff's said indorsement of said drafts the said Frederick obtained the amount of money called for by said drafts respectively; and the said plaintiff further says that said drafts,
19 indorsed as aforesaid by plaintiff, were never paid by said drawer or drawee, or by any one for them, or either of them, but that the same, after being duly presented for payment, and payment thereof demanded, were duly protested for non-payment, and returned and presented to the plaintiff as indorser thereof for payment, and the said plaintiff did, upon such return and presentation of said drafts, pay the same to the full amount called for by them, respectively, in fulfillment of plaintiff's obligation as indorser thereof as aforesaid, by means whereof

* End of third line, page 15, referred to in amendment to declaration.

the said defendant became liable to pay unto plaintiff the amount of money so paid on said draft, to wit, the sum of ten thousand dollars, together with notarial fees for protesting said drafts; and being so liable, the defendant, afterwards, to wit, on the first day of December, A. D. 1871, at said southern district, undertook and promised said plaintiff to pay the said sum of money when requested.* And for that whereas, also,

heretofore, to wit, on the 22d day of November, A. D. 1869, at Decatur, Illinois, that is to say, at said southern district, the said defendant, for the purpose of enabling one Mr. Frederick to obtain money on drafts drawn by said Frederick upon Talmadge, by and through its cashier, did address to said plaintiff a letter of credit, or guaranty, in the words and figures following, to wit:

"Capital paid in $100,000.

"FIRST NATIONAL BANK OF DECATUR, ILLINOIS.

"W'M L. HAMMER, *President.* J. H. LIVINGSTON, *Cashier.*

"DECATUR, ILL., 11–22, 1869.

"S. H. PIERCE, Esq., *Cash. Home Savings B'k, St. Louis, Mo.:*

"SIR: The letter of credit given you for Mr. Frederick is hereby extended for thirty days from expiration last date.

"Respectfully,

"J. H. LIVINGSTON, *Cr.*"

Which said letter of credit or guaranty was received in due course of mail by said plaintiff, at St. Louis, Mo., where plaintiff was then and is now doing business in the line of banking; and the said plaintiff

avers that within the said period of thirty days in said letter mentioned, to wit, on the 10th day of December, A. D. 1869, at St. Louis, Mo., the said Mr. Frederick, referred to in said letter, made his two several drafts in the words and figures following, to wit:

"$4,000 & ex. ST. LOUIS, *Dec. 10th*, 1869.

"One day after date pay to the order of myself four thousand dollars, value received, with c'r't rate of ex. on N. Y., and charge the same to account of yours, respectfully,

"P. E. FREDERICK.

"To J. S. TALMADGE, Esq.,
"141 *La Salle st., Chicago, Ill.*"

"$3,650 & ex. ST. LOUIS, *Dec. 10th*, 1869.

"One day after sight pay to the order of myself thirty-six hundred & fifty dollars, value received, with cr't rate of ex. on N. Y., and charge the same to account of yours, respectfully,

"P. E. FREDERICK.

"To J. S. TALMADGE, Esq.,
"141 *La Salle st., Chicago, Ill.*"

And that the said Mr. Frederick, on the date last aforesaid, to wit, the 10th day of December, A. D. 1869, applied to said plaintiff,

at St. Louis, Mo., and requested plaintiff, in pursuance of said letter of credit, to pay him the sums of money called for by said drafts,

* End of page 16.

respectively, and forward the same to said drawee for payment by him at Chicago, Illinois. And the said plaintiff in fact says that, upon such application and request of said Frederick, and relying solely upon the strength and credit of said last-named letter, it did, on the 10th day of December, A. D. 1869, pay the amount called for by said drafts, respectively, to said Frederick, and thereupon indorsed said drafts, and ordered the payment thereof by said payee to be made to one L. V. Parsons, cash., &c. And the said plaintiff further says that said drafts, so indorsed as aforesaid by plaintiff, were never paid by said drawee, or by any one for him, but that the same upon being duly presented for payment to said drawee, at Chicago, Illinois, were not paid, and were duly protested for non-payment, and returned to plaintiff, in whose hands they still remain unpaid, of all which said defendant had
23 due notice; by means whereof said defendant became liable to pay said plaintiff the said sums of money so paid by plaintiff upon said drafts, amounting to ten thousand dollars, and being so liable, said defendant, afterwards, to wit, on the day of undertook, and promised said plaintiff to pay said sum of money when requested.

And for that whereas, also, the said defendant heretofore, to wit, on the first day of December, A. D. 1871, at said southern district, was indebted unto said plaintiff in the sum of ten thousand dollars for so much money before that time paid, laid out, and expended by said plaintiff to and for the use of said defendant at defendant's request; and in the further sum of ten thousand dollars for so much money before that time lent by plaintiff to defendant at defendant's request; and in the further sum of ten thousand dollars for so much money before that time had and received by defendant to plaintiff's use; and being so indebted, the said defendant, in consideration thereof, afterwards, to wit, on the
24 day and year last aforesaid, at the place aforesaid, undertook and promised the plaintiff to pay *to pay* plaintiff the said sum of money in this count mentioned, upon request. Yet the said defendant, not regarding its said several promises and undertakings so made in manner and form as aforesaid, hath not as yet paid the several sums of money in said counts specified, or any or either of them, or any part thereof to said plaintiff, although often requested so to do, but to pay the same, or any part thereof, hath hitherto refused and still doth refuse, to the damage of plaintiff of ten thousand dollars. And therefore plaintiff brings suit, &c.

E. L. & W. L. GROSS AND BROADWELL,
Att'ys for Pl'ff.

(Indorsed:) Filed January 1st, A. D. 1872. J. A. Jones, cl'k.

Copy of account.

Account sued on.—First National Bank of Decatur, Illinois, to Home Savings Bank of St. Louis, Mo., Dr.

	For money paid Frederick	$10,000
25	For money lent	$10,000
	For money had and received	$10,000
	" money paid, laid out, & expended	$10,000

(Indorsed:) Filed January 1st, A. D. 1872. J. A. Jones, cl'k.

Now afterwards, to wit, on the second day of January, of the year last

aforesaid, came said defendant by Messrs. Crea and Ewing, its attorneys, and filed in the clerk's office of said court its demurrer to the declaration herein, which said demurrer is in the words and figures following, to wit:

Demurrer.

Circuit court of the United States of America, southern district of Illinois. January term, A. D. 1872.

HOME SAVINGS BANK OF ST. LOUIS, MISSOURI, *vs.* FIRST NATIONAL BANK OF DECATUR, ILLINOIS. } Assumpsit.

And now comes the said defendant by its attorneys, Crea & Ewing, and defends the wrong and injury, when, &c., and says that
26 the matters and things in the said declaration, and each and every count thereof, as therein alleged and set forth, are insufficient in law, &c., wherefore the defendant prays judgment, &c.

CREA & EWING,
Att'ys for Defendant.

(Indorsed:) Filed January 2d, A. D. 1872. J. A. Jones, cl'k.

Then afterwards, to wit, on the seventeenth day of January, at the January term of said court of the year last aforesaid, the following proceedings were had in said court in said cause and entered of record, to wit:

Hearing of demurrer.

HOME SAVINGS BANK OF ST. LOUIS, MO., *v.* FIRST NATIONAL BANK OF DECATUR, ILLINOIS. } In assumpsit.

This day this cause came *upon* to be heard upon the defendant's demurrer to each and every of the counts in plaintiff's declara-
27 tion, and the court having heard argument of counsel therein, and not being sufficiently advised in the premises, takes the same under advisement.

Afterwards, to wit, on the eighteenth day of said January, in the term and year last aforesaid, the following further proceedings were had in said court in said cause, and entered of record, to wit:

Order of court on demurrer.

HOME SAVINGS BANK OF ST. LOUIS, MO., *vs.* FIRST NATIONAL BANK OF DECATUR, ILLINOIS. } In assumpsit.

This day came again the parties, by their attorneys, and the court being now sufficiently advised in the premises, sustains the demurrer as to the 2nd and 4th counts of the plaintiff's declaration, and overrules the demurrer as to the remaining counts.

28 And afterwards, to wit, on the nineteenth day of said January, in the term and year last aforesaid, the following further proceedings were had in said court in said cause, and entered of record, to wit:

Leave to amend declaration.

HOME SAVINGS BANK OF ST. LOUIS, MO., *v.* FIRST NATIONAL BANK OF DECATUR, ILLINOIS. } In assumpsit.

This day comes again the plaintiff, by N. M. Broadwell, esq., its attorney, and on its motion leave is granted to amend 1st & 3rd counts to the declaration herein.

Then afterwards, to wit, on the twentieth day of said January, of the year last aforesaid, came again said plaintiff, by its said attorneys, and filed in the office of the clerk of the circuit court of said district its amendment to the declaration herein, which said amendment to the declaration herein is in the words and figures following, to wit:

29 *Amendment to declaration.*

HOME SAVINGS BANK OF ST. LOUIS *vs.* FIRST NATIONAL BANK OF DECATUR, ILLINOIS. } Assumpsit.

And the said plaintiff, by leave of the court, &c., makes the following amendment to the first count of the declaration herein, to wit: Strike out all after the first line of 6th page, and all of 7th page, and insert in lieu thereof the following: Pay him the sums of money called for by said drafts, respectively, and forward the same to said drawee for payment by him at Chicago, Illinois; and the said plaintiff in fact says that, upon such application and request of said Frederick, and relying solely upon the strength and credit of said letters or guarantees aforesaid, it did, on the 10th day of December, A. D. 1869, pay the amount called for by said drafts, respectively, to said Frederick, and thereupon indorsed said drafts, and ordered the payment thereof by said drawee to be made to one L. V. Parsons, cash., &c. And said plaintiff
30 further says that said drafts, so paid and indorsed as aforesaid by plaintiff, were never paid by said drawee, nor by any one for him, but that the same upon being duly presented for payment to said drawee, at Chicago, Illinois, were not paid, and were duly protested for non-payment and returned to plaintiff, in whose hands they still remain unpaid, of all which said defendant had due notice; by means whereof said defendant became liable to pay unto said plaintiff the said sums of money so paid by plaintiff as aforesaid to said Frederick upon said drafts, amounting to the sum of eight thousand dollars, ($8,000,) and, being so liable, said defendant, in consideration thereof, afterwards, to wit, on day of , undertook and promised said plaintiff to pay said sum of money when requested.

And plaintiff amends the third count of said declaration by striking out all after third line of page 15, and all of page 16, and inserting in lieu thereof the following: To pay him the said sums of money called for by said drafts, respectively, and forward the same to said
31 drawee, at Chicago, Illinois, for payment by him. And the said plaintiff in fact says that, upon such application and request of said Frederick, and relying solely upon the strength and credit of said letter, dated November 22d, it did, on the 10th day of December, A. D. 1869, (the said Frederick having indorsed said drafts,) discount said drafts, and pay the amount thereof, to wit, eight thousand dollars,

aforesaid, came said defendant by Messrs. Crea and Ewing, its attorneys, and filed in the clerk's office of said court its demurrer to the declaration herein, which said demurrer is in the words and figures following, to wit:

Demurrer.

Circuit court of the United States of America, southern district of Illinois. January term, A. D. 1872.

HOME SAVINGS BANK OF ST. LOUIS, MISSOURI, *vs.* FIRST NATIONAL BANK OF DECATUR, ILLINOIS. } Assumpsit.

And now comes the said defendant by its attorneys, Crea & Ewing, and defends the wrong and injury, when, &c., and says that
26 the matters and things in the said declaration, and each and every count thereof, as therein alleged and set forth, are insufficient in law, &c., wherefore the defendant prays judgment, &c.

CREA & EWING,
Att'ys for Defendant.

(Indorsed:) Filed January 2d, A. D. 1872. J. A. Jones, cl'k.

Then afterwards, to wit, on the seventeenth day of January, at the January term of said court of the year last aforesaid, the following proceedings were had in said court in said cause and entered of record, to wit:

Hearing of demurrer.

HOME SAVINGS BANK OF ST. LOUIS, MO., *v.* FIRST NATIONAL BANK OF DECATUR, ILLINOIS. } In assumpsit.

This day this cause came *upon* to be heard upon the defendant's demurrer to each and every of the counts in plaintiff's declara-
27 tion, and the court having heard argument of counsel therein, and not being sufficiently advised in the premises, takes the same under advisement.

Afterwards, to wit, on the eighteenth day of said January, in the term and year last aforesaid, the following further proceedings were had in said court in said cause, and entered of record, to wit:

Order of court on demurrer.

HOME SAVINGS BANK OF ST. LOUIS, MO., *vs.* FIRST NATIONAL BANK OF DECATUR, ILLINOIS. } In assumpsit.

This day came again the parties, by their attorneys, and the court being now sufficiently advised in the premises, sustains the demurrer as to the 2nd and 4th counts of the plaintiff's declaration, and overrules the demurrer as to the remaining counts.

28 And afterwards, to wit, on the nineteenth day of said January, in the term and year last aforesaid, the following further proceedings were had in said court in said cause, and entered of record, to wit:

Leave to amend declaration.

HOME SAVINGS BANK OF ST. LOUIS, MO.,
v.
FIRST NATIONAL BANK OF DECATUR, ILLINOIS. } In assumpsit.

This day comes again the plaintiff, by N. M. Broadwell, esq., its attorney, and on its motion leave is granted to amend 1st & 3rd counts to the declaration herein.

Then afterwards, to wit, on the twentieth day of said January, of the year last aforesaid, came again said plaintiff, by its said attorneys, and filed in the office of the clerk of the circuit court of said district its amendment to the declaration herein, which said amendment to the declaration herein is in the words and figures following, to wit:

29 *Amendment to declaration.*

HOME SAVINGS BANK OF ST. LOUIS
vs.
FIRST NATIONAL BANK OF DECATUR, ILLINOIS. } Assumpsit.

And the said plaintiff, by leave of the court, &c., makes the following amendment to the first count of the declaration herein, to wit: Strike out all after the first line of 6th page, and all of 7th page, and insert in lieu thereof the following: Pay him the sums of money called for by said drafts, respectively, and forward the same to said drawee for payment by him at Chicago, Illinois; and the said plaintiff in fact says that, upon such application and request of said Frederick, and relying solely upon the strength and credit of said letters or guarantees aforesaid, it did, on the 10th day of December, A. D. 1869, pay the amount called for by said drafts, respectively, to said Frederick, and thereupon indorsed said drafts, and ordered the payment thereof by said drawee to be made to one L. V. Parsons, cash., &c. And said plaintiff
30 further says that said drafts, so paid and indorsed as aforesaid by plaintiff, were never paid by said drawee, nor by any one for him, but that the same upon being duly presented for payment to said drawee, at Chicago, Illinois, were not paid, and were duly protested for non-payment and returned to plaintiff, in whose hands they still remain unpaid, of all which said defendant had due notice; by means whereof said defendant became liable to pay unto said plaintiff the said sums of money so paid by plaintiff as aforesaid to said Frederick upon said drafts, amounting to the sum of eight thousand dollars, ($8,000,) and, being so liable, said defendant, in consideration thereof, afterwards, to wit, on day of , undertook and promised said plaintiff to pay said sum of money when requested.

And plaintiff amends the third count of said declaration by striking out all after third line of page 15, and all of page 16, and inserting in lieu thereof the following: To pay him the said sums of money called for by said drafts, respectively, and forward the same to said
31 drawee, at Chicago, Illinois, for payment by him. And the said plaintiff in fact says that, upon such application and request of said Frederick, and relying solely upon the strength and credit of said letter, dated November 22d, it did, on the 10th day of December, A. D. 1869, (the said Frederick having indorsed said drafts,) discount said drafts, and pay the amount thereof, to wit, eight thousand dollars,

($8,000,) to said Frederick, and thereupon indorsed said drafts and ordered the payment thereof by said drawee to be made to one L. V. Parsons, cash., &c. And the said plaintiff further says that said drafts so discounted and indorsed by plaintiff were never paid by said drawer or drawee, or by any one for them, or either of them, but that the same, after being duly presented to said drawee for payment and payment thereof demanded and refused, were duly protested for non-payment and returned to plaintiff, in whose hands the same have ever since remained, wholly unpaid by any one, of all which said premises
32 said defendant had due notice, by means whereof said defendant became liable to pay said plaintiff the said sum of money so paid by plaintiff to said Frederick upon said drafts, upon the faith and credit of said letter, dated November 22d, 1869; and, being so liable, said defendant afterwards, to wit, on the 10th day of December, 1869, at said southern district, undertook and promised said plaintiff to pay said sum of money to plaintiff when requested.

E. L. & W. L. GROSS, &
N. M. BROADWELL,
For Pl'ff.

(Indorsed:) Filed January 20, 1872. J. A. Jones, cl'k.

Now afterwards, to wit, on the twenty seventh day of said January, in the term and year last aforesaid, the following further proceedings were had in said court in said cause, and entered of record, to wit:

Rule to plead.

HOME SAVINGS BANK OF ST. LOUIS, MO.,
vs.
FIRST NATIONAL BANK OF DECATUR, ILLINOIS. } In assumpsit.

33 On motion of plaintiff, by N. M. Broadwell, esq., its attorney, the defendant having been regularly served with process is ruled to plead herein by Monday, the 5th day of February next.

Afterwards, to wit, on the sixth day of February, in the January term of said court, of the year last aforesaid, the following further proceedings were had in said court in said cause and entered of record, to wit:

Extension of rule to plead.

HOME SAVINGS BANK OF ST. LOUIS, MO.,
vs.
FIRST NATIONAL BANK OF DECATUR, ILLINOIS. } In assumpsit.

On motion of defendant the rule to plead herein is extended to Thursday, the 8th day of February, inst.

And afterwards, to wit, on the tenth day of said February, in the term and year last aforesaid, the following further proceedings were
34 had in said court in said cause, and entered of record, to wit:

Order of default.

THE HOME SAVINGS BANK OF S'T LOUIS, Missouri,
v.
THE FIRST NATIONAL BANK OF DECATUR, Illinois.
} In assumpsit.

This day comes again the plaintiff, by N. W. Broadwell, esq., its attorney, and the defendant having failed to enter its appearance and plead pursuant to the rule of this court herein entered, was three times solemnly called, and came not, but made default. It is therefore considered by the court that the plaintiff has sustained damages by reason of the breaches of promises in its declaration mentioned, but because those damages are unknown a writ of inquiry is awarded to assess the same.

Then afterwards, to wit, on the twelfth day of said February, in the term and year last aforesaid, the following further proceedings
35 were had in the said court in said cause and entered of record, to wit:

Judgment.

HOME SAVINGS BANK OF ST. LOUIS, MISSOURI,
vs.
FIRST NATIONAL BANK OF DACATUR, ILLINOIS.
} In assumpsit.

And now comes a jury of good and lawful men, to wit, Stephen S. Whitehurst, David Roberts, George Strickland, Alexander E. Bruce, M. H. Hawks, John P. Wilson, Henry Hagerman, James W. Hampton, James Noble, George Bergen, Amos Camp, and Michael Doyle, duly elected, tried, and sworn to assess the damages herein, and, having heard the evidence, for verdict say, "We, the jury, assess plaintiff's damages to the sum of eight thousand six hundred and seventy-two dollars and three cents."

It is therefore ordered and adjudged by the court that the plaintiff recover of the defendant the said sum of eight thousand six hundred and seventy-two dollars and three cents, its damages in form aforesaid
36 assessed, together with the sum of dollars and cents, its costs and charges by it about its suit in this behalf expended, and that it have execution therefor.

Now afterwards, to wit, on the thirteenth day of said February, in the term and year last aforesaid, the following further proceedings were had in said court in said cause and entered of record, to wit:

Order vacating default.

HOME SAVINGS BANK OF ST. LOUIS, MO.,
vs.
FIRST NATIONAL BANK OF DECATUR, ILLINOIS.
} In assumpsit.

This day come the parties by their attorneys, and on motion of defendant the default and judgment herein entered is set aside upon the payment of costs, and leave granted defendant to plead.

Afterwards, to wit, on the fourteenth day of said February, of

37 the year last aforesaid, came said defendant, by its said attorneys, and filed in said clerk's office its plea herein, which said pleas are in the words and figures following, to wit:

Pleas.

UNITED STATES OF AMERICA,
Southern district of Illinois, ss:

Of the January term of the circuit court of the United States, within and for said district, A. D. 1872.

THE FIRST NATIONAL BANK OF DECATUR, Illinois,
ats.
THE HOME SAVINGS BANK OF ST. LOUIS.

And now comes the said defendant by its attorneys, Crea & Ewing, and defends the wrong and injury, when, &c., and says that it did not undertake and promise in manner and form as the said plaintiff hath above thereof in said declaration complained against it; and of this the defendant puts itself upon the country, &c.

CREA & EWING,
Att'ys for Def't.

And plaintiff doth the like, &c.

BROADWELL & GROSS,
For Pl'ff.

38 And the defendant, by its said attorneys, for further plea as to the said first count, as amended, of said declaration, says actio non, because, it says, that the defendant heretofore, to wit, on the 13th day of September, A. D. 1869, at, to wit, Decatur, in said southern district, by its cashier, executed a letter of credit, in substance following:

"Capital paid in, $100,000.

"FIRST NATIONAL BANK OF DECATUR, ILLINOIS.

"WILLIAM L. HAMMER, *President.* J. H. LIVINGSTON, *Cashier.*

"DECATUR, ILL., 9–13, 1869.

"H. C. PIERCE, Esq.,
Cashier, St. Louis, Mo.:

"SIR: We beg herewith to accredit with you P. E. Frederick, esq., whose drafts on shipments of cattle to J. S. Talmadge & Co., Ch'go, are hereby guaranteed to the am't of ten thousand dollars for thirty days from date.

"Yours, respectfully,

"J. H. LIVINGSTON, *C'r.*"

And the defendant avers that the said letter of credit so executed was received by the plaintiff at its banking-house at said city of St.
39 Louis, to wit, on the 18th day of September; and the defendant avers that afterwards, to wit, on the 18th day of September, aforesaid, the plaintiff, not understanding the full import of said letter

of credit so received by the plaintiff, by its cashier, H. C. Pierce, to learn the full import and meaning of said letter of credit, made and wrote its certain letter, in substance following, to wit:

"JOSEPH HODGMAN, *President.* H S. PARKER, *Vice-President.* H. C. PIERCE, *Cashier.*

"HOME SAVINGS BANK OF ST. LOUIS,

"*St. Louis, Sept. 18th,* 1869.

"J. H. LIVINGSTON, Esq., *Cas.:*

"DEAR SIR: Mr. Frederick has to-day presented your letter of credit for $10,000 of 13th, at 30 days. Permit me to enquire, in case his draft for $10,009 or less on Talmadge *are* paid, does your letter mean that we may take his drafts again up to same am't, and so on, for your limit, 30 days? That is to say, do you guarantee us for 30 days on Frederick's drafts on Talmadge for $10,000?

"Yours, resp'y,

"H. C. PIERCE, *Cas.*"

40 And the defendant avers that said letter last aforesaid, on, to wit, the 21st day of September, was by due course of mail received by the defendant at its banking-house in Decatur, to wit, at said southern district. And the defendant further avers that on the receipt of said letter of the plaintiff by the defendant as aforesaid, the defendant by its said cashier, Livingston, wrote and forwarded to the plaintiff in reply to the said letter of the plaintiff, a letter in substance following, to wit:

"Capital paid in, $100,000.

"FIRST NATIONAL BANK OF DECATUR, ILLINOIS.

"WILLIAM L. HAMMER, *President.* J. H. LIVINGSTON, *Cashier.*

"DECATUR, ILL'S, 9-28, 1869.

"H. C. PIERCE, *Cash., St. Louis, Mo.:*

"DEAR SIR: Your favor of the 18th is received. Yes, we guarantee you on Frederick's drafts on Tallmage for $10,000, for 30 days from Sept. 13, 1869.

"Yours, respectfully,

"J. H. LIVINGSTON."

41 And the defendant further avers that the said last above-described letter is the same letter first described in said count of said declaration, and therein alleged to be a letter of credit, and that the same was by said letter of said plaintiff, by its cashier of date September 18th, A. D. 1869, in this plea above set forth, directly connected with said letter of credit of the defendant first in this plea mentioned and described. And the defendant further avers that said instruments in writing set forth in said count, and issued by the defendant through and by said Livingston, cashier, bearing date, respectively, "10-20, 1869," "11-22, 1869," were simply extensions of the said original letter of credit of the defendant, of date September 13th, 1869, and kept the said original letter in force until the day the drafts described in said count were drawn. And the defendant avers that the said drafts were not, nor was either thereof, drawn by said Frederick in pursuance of the terms of said original letter of credit of the defendant set out in this plea; but that, on the contrary thereof, each of said drafts was drawn upon shipments of hogs to J. S. Talmage, instead of upon shipments of

42 cattle to J. S. Talmage & Co., of Chicago; and this the defendant is ready to verify, &c. Wherefore the defendant prays judgment, &c.

CREA & EWING,
Att'ys for Defendant.

And for further plea to the said first and third amended counts the defendant says actio non, because, it says, that it is not true, as by said count is supposed, that the said drafts in said counts mentioned were not paid by the drawee in said drafts named. And of this the defendant puts itself upon the country.

CREA & EWING,
Att'ys for Defendant.

And plaintiff comes & doth the like, &c.

BROADWELL & GROSS,
For Pl'ff.

And the defendant, for further plea to said first and third amended counts, says actio non, because, it says, that it is not true, as by said count is supposed, that on said drafts and each of them being presented to the drawee named therein for payment thereof, that payment was refused by said drawee, and that the same were there-
43 upon protested for non-payment; and this the defendant prays may be inquired of by the country, &c.

CREA & EWING,
Att'y for Defendant.

And plaintiff comes and doth the like, &c.

BROADWELL & GROSS,
Att'y for Pl'ff.

And for a further plea, as to said first and third counts as amended, of said declaration, the defendant says actio non, because, it says, that it is not true that the defendant, by its cashier, executed the alleged letters of credit, or written guarantee, or any of the same in said counts mentioned and described; and this the defendant prays may be inquired of by country, &c.

CREA & EWING,
Att'ys for Defendant.

And plaintiff comes and doth the like, &c.

BROADWELL & GROSS,
For Pl'ff.

And the defendant, for further plea as to the first and third counts, as amended of said declaration, says actio non, because, it says, that it is not true, as by said counts and each of them is supposed, that the
44 said J. H. Livingston was, at the dates of said letters of credit, or written guarantees mentioned in said counts, the cashier of the First National Bank of Decatur, Illinois; and this the defendant prays may be inquired of by the country, &c.

CREA & EWING,
Att'y for Defendant.

And plaintiff comes & doth the like, &c.

BROADWELL & GROSS, *For Pl'ff.*

And the defendant, for further plea as to said first and third counts as amended of said declaration, says actio non, because, it says, that the cashier of the First National Bank of Decatur, Illinois, at the time of

the execution of the said alleged letters of credit or guarantees, and each of them, in said counts mentioned and described, was not vested with authority or power by the act of Congress under the provisions of which said bank was organized, or by the usages of said bank or the by-laws thereof, to make and execute said alleged letters of credit or written guarantees on behalf of said bank; and this the de-
45 fendant is ready to verify. Wherefore the defendant prays judgment, &c.

CREA & EWING,
Att'ys for Defendant.

And for replication to 7th plea plaintiff says that said cashier had authority to make said letters of credit, and of this plaintiff puts itself upon the country, &c.

BROADWELL & GROSS BROS.,
For Plaintiff.

And the defendant, by its said attorneys, for further plea as to the said third count, as amended of said declaration, says actio non, because, it says, that the defendant heretofore, to wit, on the 13th day of September, A. D. 1869, at, to wit, Decatur, in said southern district, by its cashier, executed a letter of credit in words and figures following:

"Capital paid in $100,000.

"FIRST NATIONAL BANK OF DECATUR, ILLINOIS.

"W'M L. HAMMER, *President.* J. H. LIVINGSTON, *Cashier.*

"DECATUR, ILL'S, 9–13, 1869.

"H. C. PIERCE, Esq., *Cash'r, St. Louis, Mo.:*

46 "SIR: We beg herewith to accredit with you P. E. Frederick, esq., whose drafts on shipments of cattle to J. S. Talmadge & Co., Ch'go, are herewith guaranteed to the am't of ten thousand dollars for thirty days from date.

"Yours, respectfully,

"J. H. LIVINGSTON."

And the defendant avers that the said letter of credit so executed was received by the plaintiff, at the banking-house at said city of St. Louis, to wit, on the 18th day of September. And the defendant avers that afterwards, to wit, on the 18th day of September aforesaid, the plaintiff, not understanding the full import of said letter of credit so received by the plaintiff, by its cashier, H. C. Pierce, to learn the full import and meaning of said letter of credit, made and wrote its certain letter in the words and figures following, to wit:

"JOSEPH HODGMAN, *President.* HENRY S. PARKER, *Vice President.* H. C. PIERCE, *Cashier.*

"HOME SAVINGS BANK OF ST. LOUIS.

"ST. LOUIS, *Sept. 18th,* 1869.

"J. H. LIVINGSTON, Esq., *Cashier:*

"DEAR SIR: Mr. Frederick has to-day presented your letter of
47 credit for $10,000 of 13th at 30 days. Permit me to enquire in case his draft for $10,000 or less on Talmadge are paid, does your

letter mean that we may take his draft again up to same am't, and so on for your limit 30 days? That is to say, do you guarantee us for 30 days on Frederick's drafts on Talmadge for $10,000?

"Yours, resp'y,

H. C. PIERCE, *Cash.*

And the defendant avers that said letter last aforesaid on, to wit, the 21st day of September, was by due course of mail received by the defendant at its banking house in Decatur, to wit, at said southern district. And the defendant further avers that on the receipt of said letter of the plaintiff by the defendant as aforesaid, the defendant, by its said cashier, Livingston, wrote and forwarded to the plaintiff, in reply to the said letter of the plaintiff, a letter in the words and figures following, to wit:

"Capital paid in $100,000.

"FIRST NATIONAL BANK OF DECATUR, ILLINOIS

"WILLIAM L. HAMMER, *President.* J. H. LIVINGSTON, *Cashier.*

"DECATUR, ILLS., 9-21, 1869.

48 "H. C. PIERCE, *Cash., St. Louis, Mo.:*

"DEAR SIR: Your favor of the 18th is received. Yes, we guarantee you on Frederick's drafts on Tallmage for $10,000 for 30 days from Sept. 13, 1869.

"Yours, respectfully,

"J. H. LIVINGSTON."

And the defendant avers that after the date of said last above described letter of the defendant, and *and* within the limit of thirty days therein mentioned the defendant, by its said cashier, Livingston, wrote and forwarded to the plaintiff by mail a letter in substance as follows, to wit:

"DECATUR, ILL., 11-20, 1869.

"S. H. PIERCE, Esq., *Cash., St. Louis, Mo.:*

"DEAR SIR: The guarantee given you for Mr. Frederick please consider extended for thirty days from expiration.

"Yours, &c.,

"J. H. LIVINGSTON, *Cr.*"

And the defendant avers that afterwards, to wit, on 22nd of November, A. D. 1869, the defendant, by its said cashier, wrote and forwarded
49 to the said plaintiff the said alleged letter of credit in said third count of said declaration set forth in substance as follows:

"DECATUR, ILL., 11-22, 1869.

"H. C. PIERCE, Esq., *Cash. Home Savings B'k, St. Louis, Mo.:*

"SIR: The letter of credit given you for Mr. Frederick is hereby extended for thirty days from expiration last date.

"Respectfully,

"J. H. LIVINGSTON, *Cr.*"

And the defendant further avers that the letter of credit referred to in and by said last above described letter was not, as by said count is

supposed, the said letter of date September 21st, A. D. 1869, in the plea set forth; but that, on the contrary thereof, the said letter last above described and set forth of date 11–22, 1869, referred to and extended the letter of credit of the defendant first herein above set forth of date 9-13, 1869, (meaning September 13th, A. D. 1869,) and none other. And the defendant avers that said drafts were not, nor was either of them, drawn by said Frederick in pursuance of the terms of said original letter of credit of defendant first set out in this plea; but that, on the contrary thereof, each of said drafts was drawn upon shipments of hogs to J. S. Talmadge, instead of upon shipments of cattle to J. S. Talmadge & Co. of Chicago, as required by said letter of credit first in this plea set forth. And this the defendant is ready to verify, &c.

50

CREA & EWING,
Att'ys for Def't.

(Indorsed:) Filed February 14, 1872. J. A. Jones, cl'k.

Afterwards, to wit, on said fourteenth day of February, in the January term of said court, of the year last aforesaid, the following further proceedings were had in said court in said cause, and entered of record, to wit:

Order of continuance.

HOME SAVINGS BANK OF ST. LOUIS, MO.,
v.
FIRST NATIONAL BANK OF DECATUR, ILLINOIS. } In assumpsit.

51 This day come the parties, by their attorneys, and by consent this cause is continued.

And afterwards, to wit, on the seventeenth day of June, of the year last aforesaid, came again said plaintiff, by its attorneys, and filed in the clerk's office of said court its demurrer to the second and last pleas herein, which said demurrer is in the words and figures following, to wit:

Demurrer to pleas.

UNITED STATES OF AMERICA,
Southern District of Illinois, ss:

June term, 1872.

HOME SAVINGS BANK OF ST. LOUIS, MO.,
v.
FIRST NATIONAL BANK OF DECATUR, ILLINOIS. } In assumpsit.

And the said plaintiff, by its att'ys, comes, &c., and says that the second and last pleas by said defendant pleaded, are each insufficient in law to bar plaintiff's suit, &c., and plaintiff demurs to each of said pleas, & prays the judgment of the court, &c.

N. M. BROADWELL & E. L. & W. L. GROSS,
Att'y' for Pl'ff.

(Indorsed:) Filed June 17, 1872. J. A. Jones, cl'k.

52 Then afterwards, to wit, on the twenty-fifth day of said June, of the June term of said court, of the year last aforesaid, the fol-

lowing further proceedings were had in said court in said cause, and entered of record, to wit:

Order of court on demurrer.

HOME SAVINGS BANK OF ST. LOUIS, MO.,
v.
FIRST NATIONAL BANK OF DECATUR, ILLINOIS. } In assumpsit.

This day this cause came on to be heard upon plaintiff's demurrer to defendant's second and last plea, and the court being sufficiently advised in the premises sustains said demurrer.

Now, afterwards, to wit, on the second day of July, in the term and year last aforesaid, the following further proceedings were had in said court in said cause, and entered of record, to wit:

Order for hearing.

HOME SAVINGS BANK OF ST. LOUIS, MO.,
v.
FIRST NATIONAL BANK OF DECATUR, ILLINOIS. } In assumpsit.

53 This day come the parties, by their attorneys, and by agreement this cause is set for hearing on Tuesday, the 9th day of July, inst.

Afterwards, to wit, on the ninth day of July, in the term and year last aforesaid, the following further proceedings were had in said court in said cause, and entered of record, to wit:

Judgment.

HOME SAVINGS BANK OF ST. LOUIS, MO.,
v.
FIRST NATIONAL BANK OF DECATUR, ILLINOIS. } In assumpsit.

This day comes, as well the plaintiff, by Messrs. E. L. and W. L. Gross and N. M. Broadwell, esq., its attorneys, as the defendant, by Messrs. Crea and Ewing, its attorneys, and issue being joined, whereupon comes a jury of good and lawful men, to wit: Obed Lewis, M. O. Reeves, E. L. Higgins, J. Q. Vanness, J. N. Withrow, Charles Arnold, John T. Jones, Nelson Newman, B. W. Briggs, S. S. Whitehurst, James Phillips, and E. S. Reynolds, duly elected, tried, and sworn to try
54 said issue; and having heard the evidence, argument of counsel, and received the instructions of the court, for verdict say: "We, the jury, find for the plaintiff, and assess its damages to the sum of eight thousand eight hundred and thirty-five dollars and seventy-five cents."

Whereupon the defendant enters its motion for a new trial herein, which is overruled by the court.

It is therefore ordered and adjudged that the plaintiff recover of the defendant the said sum of eight thousand eight hundred and thirty-five dollars and seventy-five cents, its damages aforesaid assessed, together with the sum of one hundred and seven dollars and forty-eight cents, its costs and charges by it about its suit in this behalf expended, and that it have execution therefor.

Thereupon the defendant tenders its bill of exceptions, which is

signed, sealed, and ordered to be made a part of the record in this cause.

55 And afterwards, to wit, on said ninth day of July, of the year aforesaid, came again said defendant, by its said attorneys, and filed in said clerk's office its bill of exceptions herein, which said bill of exceptions is in the words and figures following, to wit:

Bill of exceptions.

In the circuit court of the United States for the southern district of Illinois.

UNITED STATES OF AMERICA,
Southern District of Illinois:

HOME SAVINGS BANK OF ST. LOUIS
vs.
FIRST NATIONAL BANK OF DECATUR, ILLINOIS. } Bill of exceptions.

Be it remembered that at the trial of this cause at the June term, A. D. 1872, of the said circuit court, the plaintiff, to maintain the issue on its part, introduced as a witness H. C. Pierce, who testified to the jury as follows:

I reside in St. Louis, Mo.; am cashier of the Home Savings Bank of St. Louis, the plaintiff in this suit, and was acting in such capa-
56 city in the month of September, A. D. 1869. The plaintiff was then doing a general banking business in St. Louis.

About the 22d day of September, A. D. 1869, I received by due course of mail, as the cashier of the plaintiff, a letter written and directed to me as such cashier by J. H. Livingston, the cashier of the defendant. That letter I now hold in my hand. It bears date 9—21, 1869. Afterwards I received another letter, written by said Livingston, the cashier of the defendant, bearing date 10—20, 1869. It was received soon after the date thereof. I have the same now in my hand. About the 23d day of November, A. D. 1869, I received another letter from said Livingston, bearing date 11—22, 1869. I know P. E. Frederick, the man referred to in said letters. He was engaged in shipping stock at St. Louis at the time the first of said letters was received from said Livingston, and had been so engaged for some time prior thereto, and afterwards on the 10th day of December, A. D. 1869, Mr. Frederick drew two drafts upon J. S. Talmadge, one for $4,000, payable
57 one day after date, to the order of said Frederick, the other for $3,650, payable to the order of said Frederick, one day after sight. Mr. Frederick indorsed both drafts in blank, and the plaintiff, on the day such drafts were drawn, and relying upon the said letters so received from said Livingston, paid the amounts called for by said drafts to Mr. Frederick and took possession thereof, and I, as the cashier of the plaintiff, indorsed the same to L. V. Parsons, on the day they were drawn. Mr. Parsons was the cashier of the Third National Bank of Chicago, and I sent both drafts to him by mail the same day they were drawn and cashed or paid by the plaintiff. Both drafts were returned to the plaintiff within a short time thereafter by the said Parsons, and at the same time, with a statement that they had not been paid by the drawee thereof. There was a protest attached to each draft on their return to the plaintiff, and the same is still so attached.

The drafts now shown me are the same drawn by Frederick, and
58 paid by the plaintiff as I have stated. Neither Frederick nor Talmadge, nor anybody else, has ever paid the plaintiff the amount of said drafts, or any part thereof. I do not know that the drafts were drawn upon shipments of cattle. I do not know what they were drawn upon. After I had been notified by said Parsons that the drafts had not been paid I immediately advised the defendant of the fact. I did so by letter. I have not the letter in my possession. I never had a personal interview with any of the officers of the First National Bank of Decatur, the defendant, in reference to the dishonoring of said drafts by Talmadge, nor had any person connected with the plaintiff. All the notification the plaintiff gave the defendant of such dishonor was by a letter written by me. I do not know that the defendant received the letter.

Plaintiff then gave in evidence the said letters of Livingston, dated 9-21, 1869, 10-20, 1869, and 11-22, 1869, as follows:

59 "Capital paid in $100,000.

"FIRST NATIONAL BANK OF DECATUR, ILLINOIS.

"W'M L. HAMMER, *President.* J. H. LIVINGSTON, *Cashier.*

"DECATUR, *Ill.*, 9-21, 1869.

"H. C. PIERCE, Esq., *Cash., St. Louis, Mo.:*

"DEAR SIR: Your favor of the 18th is received. Yes, we guarantee you on Frederick's drafts on Talmage for $10,000 for 30 d's from Sept. 13, 1869.

"Yours, respectfully,

"J. H. LIVINGSTON."

"Capital paid in $100,000.

"FIRST NATIONAL BANK OF DECATUR, ILLINOIS.

"W'M L. HAMMER, *President.* J. H. LIVINGSTON, *Cashier.*

"DECATUR, *Ill.*, 10-20, 1869.

"H. C. PIERCE, Esq., *Cash., St. Louis, Mo.:*

"DEAR SIR: The guarantee given for Mr. Frederick please consider extended for 30 days from expiration.

"Yours, &c.,

"J. H. LIVINGSTON, *Cr.*"

60 "Capital paid in $100,000.

"FIRST NATIONAL BANK OF DECATUR, ILLINOIS.

'WM. L. HAMMER, *President.* J. H. LIVINGSTON, *Cashier.*

"DECATUR, ILL., 11-22, 1869.

"S. H. PIERCE, Esq., *Cash.,*
"*Home Savings B'k, St. Louis, Mo.:*

"SIR: The letter of credit given you for Mr. Frederick is hereby extended for thirty days from expiration last date.

"Respectfully,

"J. H. LIVINGSTON, *Cr.*"

Plaintiff then offered in evidence the two drafts and the alleged protests thereto attached, referred to by witness, Pierce, to which the de-

fendant objected. The objection was by he court overruled, and the said drafts and protests were read in evidence to the jury, and are as follows:

"$4,000 & ex. ST. LOUIS, *Dec. 10th*, 1869.

"One day after date pay to the order of myself, four thousand
61 $\frac{00}{100}$ dollars, with cr't rate of ex. on N. Y., value received, and charge the same to account of, yours, respectfully,

"P. E. FREDERICK.

"To J. L. TALMADGE, Esq.,
"141 *La Salle st., Chicago, Ills.*"

[U. S. int.-rev. stamps amounting to $2.00, canceled.]

(Written across the face in red ink: Protested for non-payment Dec. 14th, 1869.—M. S. B., N. P.)

(Indorsed:) P. E. Frederick pay L. V. Parsons, esq., cas., or order. H. C. Pierce, cash.

"STATE OF ILLINOIS,
"*County of Cook, city of Chicago, ss:*

"Be it known that on this fourteenth day of December, in the year of our Lord one thousand eight hundred and sixty-nine, I, Mack S. Brady, a notary public, duly commissioned and sworn, and residing in the city of Chicago, in said county and State, at the request of L. V. Parsons, esq., cashier, went, with the original draft, which is above attached, to the office of J. S. Talmadge and demanded payment thereon, which was refused, the person in the office saying Talmadge is not here; he may be here to-day. And thus was payment refused. Whereupon I,
62 the said notary, at the request aforesaid, did protest, and by these presents do solemnly protest, as well against the maker of said draft, the indorsers thereof, as all others whom it may or doth concern, for exchange, re-exchange, and all costs, charges, damages, and interest already incurred, by reason of the non-payment of the said draft.

"And I, the said notary, do hereby certify that on the same day and year above written, due notice of the foregoing protest was put in the post-office at Chicago, as follows:

"Notice for H. C. Pierce, esq'r, cashier, St. Louis, Mo.;
" for P. E. Frederick, inclosed to H. C. Pierce, cashier;
" for J. S. Talmadge, Chicago;

each of the above-named places being the reputed place of residence of the persons to whom this notice was directed.

"In testimony whereof, I have hereunto set my hand and affixed my official seal the day and year above written.

[L. S.] "MACK S. BRADY,
"*Notary Public.*"

[U. S. int.-rev. stamp, 25 cts., canceled.]

"$3,650 & ex. ST. LOUIS, *Dec. 10th*, 1869.

"One day after sight pay *pay* to the order of myself, thirty-six
63 hundred and fifty $\frac{00}{100}$ dollars, with c'rt rate of ex. on N. Y., value received, and charge the same to account of,

"Yours, respectfully,

"P. E. FREDERICK."

"To J. S. TALMADGE, Esq.,
"141 *La Salle st., Chicago, Ills.*"

[U. S. int.-rev. stamp, amounting to $1.85, canceled.]

(Written across the face, in red ink: Protested for non-acceptance, Jan. 14, '70. Protested for non-payment January 18th, 1870.)

(Indorsed:) P. E. Frederick pay L. V. Parsons, cas., or order. H. C. Pierce, cas.

"STATE OF ILLINOIS,

" *County of Cook, city of Chicago, ss:*

"Be it known, that on this fourteenth day of January, in the year of our Lord one thousand eight hundred and seventy, I, Mack S. Brady, a notary public, duly commissioned and sworn, and residing in the city of Chicago, in said county and State, at the request of L. V. Parsons, esq., cashier, went, with the original draft, which is above attached, to the office of J. S. Talmadge and demanded acceptance thereon, which was refused, the person in the office saying, Talmadge is not here, and I can't do anything for it.

64 "Whereupon I, the said notary, at the request aforesaid, did protest, and by these presents do solemnly protest, as well against the maker of said draft, the indorsers thereof, as all others whom it may or doth concern, for exchange, re-exchange, and all costs, charges, damages, and interest, already incurred, by reason of the non-acceptance of the said draft. And I, the said notary, do hereby certify that on the same day and year above written, due notice of the foregoing protest was put in the post-office at Chicago, as follows:

"Notice for H. C. Pierce, cas., St. Louis, Mo.;
" for P. E. Frederick, inclosed to H. C. Pierce, cas.;
" for J. S. Talmadge, Chicago;

each of the above-named places being the reputed place of residence of the persons to whom this notice was directed.

"In testimony whereof, I have hereunto set my hand and affixed my official seal the day and year above written.

[L. S.] "MACK S. BRADY,
"*Notary Public.*"

[U. S. int.-rev. stamp, 25 cts., canceled]

P. E. Frederick, being sworn for the plaintiff, said: I was en-
65 gaged in buying and shipping stock in St. Louis during the fall and winter of 1869. On the 10th day of December, A. D. 1869, I drew two drafts upon J. S. Talmadge, of Chicago, one for $4,000, the other for $3,650. The witness was here shown the two original drafts above copied in this bill of exceptions, when he proceeded: Both drafts were signed and indorsed by me on the day they bear date. I am certain of that. The Home Savings Bank cashed the drafts for me after I had indorsed the same. I do not recollect just how much I received from the bank. It was about the face of the drafts. A few days after I drew the drafts, I was notified by the plaintiff that they had not been paid by Talmadge. I have never paid the plaintiff the amount I received on said drafts or any part thereof.

The defendant, to sustain the issues on its part, called H. C. Pierce, the cashier of the plaintiff, who testified as follows: On the 18th day of September, A. D. 1869, Mr. P. E. Frederick presented at the coun-
66 ter of the plaintiff in St. Louis, Mo., a letter of credit signed by J. H. Livingston, cashier of the First National Bank of Decatur, Illinois. I had been acquainted with Mr. Frederick for some time before that. The letter now handed me is the one presented by Mr. Fred-

erick. It is dated 9–13, 1869. I took the letter presented by Mr. Frederick, and it has since remained in the possession of the plaintiff, or its officers and attorneys. On Mr. Frederick handing me the letter, I the same day wrote a letter addressed to J. H. Livingston, the cashier of the defendant, and mailed the same to him. I have a copy of the letter I then wrote Mr. Livingston now in my possession. (The witness then produced the copy, which was then and there agreed by counsel for the plaintiff and defendant should be used in evidence on behalf of the defendant in lieu of the original, if the original under the ruling of the court would have been admitted in evidence.)

I received an answer to that letter. It was signed by Mr. Liv-
67 ingston, as cashier of the defendant, and was dated 9–21, 1869. The answer is the same letter first read to the jury on behalf of the plaintiff, and signed by said Livingston, and is the same letter first set out and described in the first count of the plaintiff's declaration. The letters of Livingston dated respectively 9–15, 1869, 9–21, 1879, 10–20, 1869, 11–22, 1869, are all the letters received by the plaintiff from the defendant in reference to Frederick's drafts on Talmadge, and the letter of the defendant written by me to Livingston, the cashier of defendant, on the 18th of September, 1869, is the only letter written by the plaintiff, or on its behalf, to the defendant in reference to that business. No person connected with the plaintiff ever had any personal conference or interview with any of the officers of the defendant in reference to the plaintiff paying or the defendant guaranteeing drafts of Frederick upon Talmadge. The letters I have just mentioned contain all that was ever written on the subject.

68 The defendant's counsel then offered in evidence the letter of J. H. Livingston, cashier, to H. C. Pierce, cashier of plaintiff, dated 9–13, 1869, to which the plaintiff, by its counsel, objected. The court overruled the objection, and the letter was read to the jury as follows:

"Capital paid in, $100,000.

"FIRST NATIONAL BANK OF DECATUR, ILLINOIS.

"WM. L. HAMMER, *President.* J. H. LIVINGSTON, *Cashier.*

"DECATUR, ILL., 9–13, 1869.

"H. C. PIERCE, Esq., *Cash.*,
"*St. Louis, Mo.:*

"SIR: We beg herewith to accredit with you P. E. Frederick, esq., whose drafts on shipments of cattle to J. S. Talmadge & Co., Ch'go, are hereby guaranteed to the am't of ten thousand dollars, for thirty days from date.

"Yours, respectfully,

"J. H. LIVINGSTON, *C'r.*"

Defendant's counsel then offered in evidence the copy of the answer of H. C. Pierce, cashier of plaintiff, to said letter of said Livingston, to which the plaintiff's counsel objected, the court under agreement
69 of counsel considering the said copy as the original. The court overruled said objection, and the same was read to the jury as follows:

"JOSEPH HODGMAN, *President.* HENRY S. PARKER, *Vice-President.* H. C. PIERCE, *Cashier.*

"HOME SAVINGS BANK OF ST. LOUIS,
"*St. Louis, Sept. 18th,* 1869.

"J. H. LIVINGSTON, Esq.:

"DEAR SIR: Mr. Frederick has to-day presented your letter of credit for $10,000, of 13th, at 30 days. Permit me to inquire in case his draft for $10,000 or less on Talmadge are paid, does your letter mean that we may take his drafts again up to same am't, and so on for your limit, 30 days? That is to say, do you guarantee us for 30 days on Frederick's drafts on Talmadge for $10,000?

"Yours, resp'y,

"H. C. PIERCE, *Cas.*

"DECATUR, ILL.

"A true copy.

"H. C. PIERCE, *Cas.*"

The defendant then called P. E. Frederick, who testified as follows:

The two drafts were drawn by me on J. S. Talmadge the same
70 day they bear date. They were not drawn on shipments of cattle. They were drawn on shipments of hogs made by me to J. S. Talmadge, Chicago. I was notified that the drafts were not paid within a few days after the date thereof.

This was all the evidence in the case.

The defendant then moved the court upon the evidence aforesaid to instruct the jury as follows:

The court instructs the jury that if they believe from the evidence that the First National Bank of Decatur agreed with the Home Savings Bank of St. Louis to guarantee drafts drawn by P. E. Frederick, on shipments of cattle to J. S. Talmadge & Co., Chicago, for ten thousand dollars for thirty days, and that no other agreement of guaranty was made by the defendant and plaintiff; and if the jury further believe from the evidence that the drafts given in evidence were drawn upon shipments of hogs to J. S. Talmadge, of Chicago, then the jury
71 should find for the defendant.

The court refused to give said instruction to the jury, to which refusal the defendant, by its counsel, then and there excepted.

The plaintiff then moved the court upon the evidence aforesaid to instruct the jury as follows:

The contract of guaranty between the plaintiff and defendant is contained in the letter of J. H. Livingston dated Sept. 21, 1869, and the extension thereof, and the defendant would be bound to pay drafts drawn by Frederick upon Talmadge within the limits of said letter and extensions thereof, as to time and amount, no matter whether such drafts were drawn upon shipments of cattle or not.

The court gave the said instruction to the jury, to which the defendant by its counsel then and there excepted. The jury found for the plaintiff in the sum of $8,835$\frac{75}{100}$.

Whereupon the defendant, by its counsel, moved the court for a new trial, on the grounds that the verdict was against the evidence,
72 and that the court gave improper instructions to the jury on behalf of the plaintiff, and refused proper instructions asked for by the defendant, which notice was by the court overruled, to which overruling of said notice for a new trial the defendant, by its counsel, then

and there excepted. And thereupon the court entered judgment upon said verdict. And now because the said matters do not appear of record the defendant has caused the same to be reduced to writing and presents the same to the Hon. Samuel H. Treat, judge of said court, as the bill of exceptions in said cause, which bill is, by said judge, *is* now on this day signed and made the bill of exceptions in this cause.

Springfield, Ill's, July 9th, 1872.

S. H. TREAT. [SEAL.]

(Indorsed:) Filed July 9th, A. D. 1872. J. A. Jones, cl'k.

Afterwards, to wit, on the eighteenth day of November, of the year aforesaid, came again said defendant by its attorney and filed in
73 the clerk's office of said court its bond herein, which said bond is in the words and figures following, to wit:

Supreme Court of the United States.

Bond.

HOME SAVINGS BANK OF ST. LOUIS, MO., *vs.* FIRST NATIONAL BANK OF DECATUR, ILLINOIS. } In assumpsit.

Know all men by these presents that we, the First National Bank of Decatur, Illinois, as principal, and William L. Hammer and John R. Race, as sureties, are held and firmly bound unto the Home Savings Bank of St. Louis, Missouri, in the sum of five hundred dollars, to be paid to the said Home Savings Bank, its executor or administrator, to which payment, well and truly to be made, we bind ourselves and each of us, jointly and severally, and each of our heirs, executors, and administrators, firmly by these presents, sealed with our seals and dated this 15th day of November, A. D. 1872.

74 Whereas the above-named First National Bank of Decatur, Illinois, hath prosecuted a writ of error to the Supreme Court of the United States, to reverse the judgment rendered in the above-entitled suit by the circuit court of the United States for the southern district of Illinois:

Now, therefore, the condition of this obligation is such that if the above-named First National Bank of Decatur, Illinois, shall prosecute its said writ of error to effect, and answer all costs and damages growing out of the prosecution of said writ of error if it shall fail to make good its plea, then this obligation to be void; otherwise to remain in full force and effect.

First National Bank of Decautur, Illinois—

By W'M L. HAMMER, *P't.* [SEAL.]
W'M L. HAMMER. [SEAL.]
JOHN R. RACE. [SEAL.]

Approved.

S. H. TREAT,
Dist. Judge.

(Indorsed:) Filed November 18th, A. D. 1872.

J. A. JONES. *Clk.*

And afterwards, on said eighteenth day of November, of the year last aforesaid, a writ of error was issued in said cause, in words
75 and figures following, to wit:

Writ of error.

UNITED STATES OF AMERICA, *ss:*

The President of the United States to the judges of the circuit court of the United States for the southern district of Illinois, greeting:

Because in the record and proceedings, and also in the rendition of the judgment of a plea which is in the said circuit court before you, between Home Savings Bank of St. Louis, Missouri, plaintiff, and First National Bank of Decatur, Illinois, defendant, a manifest error hath happened, to the great damage of the said First National Bank of Decatur, Illinois, as by its complaint appears: We, being willing that the error, if any there hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together
76 with this writ, so that you may have the same at Washington on the first Monday of December next, in the said Supreme Court to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein, to correct that error, what of right and according to the laws and customs of the United States should be done.

Witness the honorable Salmon P. Chase, chief justice of the said Supreme Court, this eighteenth day of November, in the year of our Lord one thousand eight hundred and seventy-two, and of our Independence the ninety-seventh year.

J. A. JONES,
Clerk of the Circuit Court of the United States
For the Southern District of Illinois.

Then afterwards, to wit, on said eighteenth day of November, of the year last aforesaid, a citation was issued in said cause in the words and figures following, to wit:

77 *Citation.*

UNITED STATES OF AMERICA, *ss:*

To Home Savings Bank of St. Louis, Missouri:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, on the first Monday of December next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the southern district of Illinois, wherein First National Bank of Decatur, Illinois, is plaintiff, and you are defendant in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness Samuel H. Treat, district judge of the United States for the southern district of Illinois, and one of the judges of the circuit court of the United States for said district, this eighteenth day of November, in the year of our Lord one thousand eight hundred and seventy-two, and of our Independence the ninety-seventh year.

S. H. TREAT,
District Judge.

78 I hereby certify that I this day read the within citation, and delivered a true copy of the same, to Messrs. E. L. and W. L. Gross, attorneys for the within named Home Savings Bank of St. Louis, Missouri. Nov. 20th, 1872.

E. R. ROE,
U. S. Marshal,
By JAMES E. HILL,
Deputy.

Service, 4; copy, 20—$4.20.

(Indorsed:) Supreme Court United States. Home Savings Bank of St. Louis, Mo., v. First National Bank of Decatur, Illinois. Citation. Returnable December 2nd, 1872.

Certificate.

CIRCUIT COURT OF THE UNITED STATES,
Southern district of Illinois, ss:

I, J. A. Jones, clerk of the circuit court of the United States in and for the said southern district of Illinois, do hereby certify the foregoing seventy-seven pages to contain a true and complete copy of all the papers filed, process issued, and proceedings thereon had, in a certain cause wherein Home Savings Bank of St. Louis, Missouri, is plaintiff, and First National Bank of Decatur, Illinois, is defendant, as truly and completely as the same appear of file and record in my said office.

In witness whereof I have hereunto set my hand and seal of said court at Springfield, in said district, this twenty-first day of November, in the year of our Lord one thousand eight hundred and seventy-two, and of our Independence the ninety-seventh year.

[SEAL.] J. A. JONES, *Clerk.*

(Indorsement on cover:) No. 400. The First National Bank of Decatur, Illinois, plaintiff in error, vs. The Home Savings Bank of St. Louis, Missouri. S. Illinois C. C. U. S. Filed 18 January, 1873.

SUPREME COURT OF THE UNITED STATES.

THE FIRST NATIONAL BANK OF DECATUR, ILLINOIS,

PLAINTIFF-IN-ERROR,

VS.

THE HOME SAVINGS BANK OF ST. LOUIS, MISSOURI,

DEFENDANT-IN-ERROR.

In Error to the Circuit Court of the United States for the Southern District of Illinois.

ARGUMENT OF JOHN B. HAWLEY,

FOR PLAINTIFF-IN-ERROR.

REVIEW PRINT, MOLINE, ILL.

ARGUMENT.

May it Please your Honors:

The facts in this case, as they appear of record, are as follows:

The Defendant-in-error, in the Court below, filed its declaration setting up the making by the Plaintiff-in-error of the following:

"*Capital Paid in*, $100,000.

"FIRST NATIONAL BANK OF DECATUR, ILLINOIS.

"WM. L. HAMMER, *President.* J. H. LIVINGSTON, *Cashier.*

"DECATUR, ILL, 9–21, 1869.

"H. C. PIERCE, Esq., *Cash., St. Louis, Mo.:*

"*Dear Sir:* Your favor of the 18th is received. Yes; we guarantee you on Frederick's drafts on Talmadge for $10,000 for 30 days from Sept. 13. '69.

"Yours respectfully,

"J. H. LIVINGSTON."

Also, the following:

Capital Paid in, $100,000.

"FIRST NATIONAL BANK OF DECATUR, ILLINOIS.

"WM. L. HAMMER, *President.* J. H. LIVINGSTON, *Cashier.*

"DECATUR, ILL., 10–20, 1869.

"H. C. PIERCE, Esq., *Cash., St. Louis, Mo.:*

"*Dear Sir:* The guarantee given for Mr. Frederick please consider extended for 30 days from expiration. Yours, &c.,

"J. H. LIVINGSTON."

Also, the following:

Capital Paid in, $100,000.

"FIRST NATIONAL BANK OF DECATUR, ILLINOIS.

"WM. L. HAMMER, *President.* J. H. LIVINGSTON, *Cashier.*

"DECATUR, ILL, 11–22, 1869.

"S. H. PIERCE, Esq., *Cash. Home Savings Bank, St. Louis, Mo.:*

"*Sir:* The letter of credit given you for Mr. Frederick is hereby extended for thirty days from expiration last date. Respectfully,

"J. H. LIVINGSTON, *Cr.*"

Also, the making by Frederick, and the endorsement by the Defendant-in-error, and the payment by Defendant-in-error on account of protest, of the two following drafts:

"$4,000 & ex. ST. LOUIS, Dec. 10th, 1869.

"One day after date pay to the order of myself, Four Thousand Dollars, with crt. rate of ex. on N. Y., value received, and charge the same to account of

"Yours, respectfully,

"P. E. FREDERICK."

"To J. S. TALMADGE, Esq.,
141 La Salle St., Chicago, Ills."

"$3,650 & ex. ST. LOUIS, Dec. 10th. 1869.

"One day after sight pay to the order of myself, Thirty-six Hundred & Fifty Dollars, with crt. rate of ex. on N, Y., value received, and charge the same to account of, Yours, respectfully,

"P. E. FREDERICK."

"To J. S. TALMADGE, Esq.,
141 La Salle St., Chicago, Ills."

To which the Plaintiff-in-error pled:

FIRST. The general issue.

SECOND. The making by the Plaintiff-in-error, and delivery to P. E. Frederick, Esq., of the following letter of credit, addressed to the cashier of the Defendant-in-error:

"*Capital Paid in,* $100,000.

"FIRST NATIONAL BANK OF DECATUR, ILLINOIS.

"WILLIAM L. HAMMER, *President.* J. H. LIVINGSTON, *Cashier.*

"DECATUR, ILL, 9–13, 1869.

"H. C. PIERCE, Esq., *Cashier, St. Louis, Mo.:*

"*Sir:* We beg herewith to accredit with you, P. E. Frederick, Esq., whose drafts on shipments of cattle to J. S. Talmadge & Co., Ch'go, are hereby guaranteed to the am't of ten thousand dollars for thirty days from date.

"Yours, respectfully,

"J. H. LIVINGSTON, *Cr.*"

Also, the following letter from Defendant-in-error to Plaintiff-in-error:

"JOSEPH HODGMAN, *President.* H. S. PARKER, *Vice President.* H. C. PIERCE, *Cashier.*

"HOME SAVINGS BANK OF ST. LOUIS.

"ST. LOUIS, Sept. 18th, 1869.

"J. H. LIVINGSTON, Esq., *Cas:*

"*Dear Sir:* Mr. Frederick has to-day presented your letter of credit for $10,000 of 13th, at 30 days. Permit me to enquire, in case his draft for $10,000 or less on Talmadge *are* paid, does your letter mean that we may take his drafts again up to same am't, and so on, for your limit, 30 days? That is to say, do you guarantee us for 30 days on Frederick's drafts on Talmadge for $10,000? Yours, resp'y,

"H. C. PIERCE, *Cas.*

The Plaintiff-in-error also sets up in the same plea the making of the letter of September 21st, 1869, to which attention has already been called, and which was declared upon by the Defendant-in-error, and averred that said last mentioned letter did not in any way supercede or take the place of the original letter of September 13th, 1869; and that the drafts were drawn upon shipments of hogs and not of cattle, as required by the letter of credit.

To this plea the Court sustained a demurrer.

The last plea was substantially like the second, and to it the Court also sustained a demurrer.

Upon the trial the Plaintiff below offered in evidence, against the objection of the Defendant, the letters and drafts described in its declaration. The Defendant below offered in evidence the letter of credit of September 13th, 1869, and the letter of inquiry in regard thereto of September 18th, 1869, and proved that the drafts offered in evidence by Plaintiff below were drawn upon shipments of hogs and not of cattle, as required by the terms of the letter of credit of September 13th, 1869.

The Defendant below then moved the Court to instruct the jury as follows:

"The Court instructs the jury that if they believe from the evidence that the First National Bank of Decatur agreed with the Home Savings Bank of St. Louis to guarantee drafts drawn by P. E. Frederick, on shipments of cattle to J. S. Talmadge & Co., Chicago, for ten thousand dollars for thirty days, and that no other agreement of guaranty was made by the Defendant and Plaintiff; and if the jury further believe from the evidence that the drafts given in evidence were drawn upon shipments of hogs to J. S. Talmadge, of Chicago, then the jury should find for the defendant."

The Court refused to give the instruction, and the Defendant below then and there excepted. The Plaintiff below moved the Court to instruct the jury as follows:

"The contract of guaranty between the Plaintiff and Defendant is contained in the letter of J. H. Livingston, dated September 21, 1869, and the extension thereof, and the Defendant would be bound to pay drafts drawn by Frederick upon Talmadge within the limits of said letter and extensions thereof, as to time and amount, no matter whether such drafts were drawn upon shipments of cattle or not."

The Court gave said instruction, and the Defendant below then and there excepted.

The jury found for the Plaintiff below in the sum of $8,835.75.

Defendant below moved for a new trial on the ground that the verdict was against the evidence and that the Court gave improper instructions on behalf of the Plaintiff below, and refused proper instructions asked for by the Defendant below.

The motion was overruled, Defendant below excepted, and judgment was rendered upon the verdict.

ERRORS ASSIGNED.

1. The Court below erred in sustaining the demurrer to the second and last pleas of the Defendant.

2. The Court erred in refusing to instruct the jury at the request of the Defendant below.

3. The Court erred in giving the instruction at the request of the Plaintiff below.

4. The Court erred in everruling the motion for a new trial.

5. The Court erred in not carrying the demurrer to the second and last pleas back and sustaining it to the declaration, for the reason that the action was based upon a letter of credit, and there is no authority of law for the issuance of a letter of credit by a national bank.

May it Please your Honors:

I am unable to see upon what principle of law the Court below proceeded to judgment in this case. A judgment against the Defendant below could only be rendered by utterly ignoring the original letter of credit, which was the only true foundation for the proceeding. This was done.

The original letter of credit, of September 13th, 1869, already referred to, guarantied the Plaintiff below against loss upon drafts of Frederick, drawn on shipments of cattle to J. S. Talmadge & Co., for $10,000 for thirty days from date. That was a plain, concise statement of what the Defendant below agreed to do. In regard to it and its meaning the cashier of the Plaintiff below had but one doubt, and that was whether if drafts to the amount of $10,000 were drawn and paid as required by the letter of credit, other drafts to a like amount could also be drawn within the time limited. To settle that doubt the letter of the cashier of the Plaintiff below, of September 18th, 1869, was written to the cashier of the Defendant below. From that letter it appears that Mr. Frederick had that day presented the letter of credit for the first time. Thereupon the cashier of Plaintiff below inquires of cashier of Defendant as follows: "In case his drafts for $10,000 or less on Talmadge *are* paid, does your letter mean that we may take his drafts again up to the same am't, and so on for your limit, 30 days? That is to say, do you guarantee us for 30 days on Frederick's drafts on Talmadge for $10,000?"

To that the Plaintiff-in-error replied by its cashier, under date of September 21st, 1869, as already shown. Now it seems entirely clear that the letter of September 18th was only intended to inquire whether or not the drafts, if paid within the thirty days, could within that time be renewed; or whether, when once issued, the power under the letter of credit was exhausted. Now the reply shows clearly that it was so understood by the Defendant below. Its cashier

says: "Yes; we guarantee you on Frederick's drafts on Talmadge for $10,000 for 30 days from Sept. 13th, 1869."

To sustain the judgment of the Court below this Court must be satisfied that it was the intention of the parties to abandon the original letter of September 13th, and yet there is nowhere an indication manifested of such a purpose. The Defendant below regarded it as an important consideration in its letter of credit that the drafts to be drawn by Frederick should be drawn upon shipments of cattle; and the Plaintiff-in-error now insists that it never in any manner waived that condition. The Plaintiff below nowhere asks the Defendant to waive that condition, and the Defendant nowhere intimates a willingness to do so. It will be observed that the letter of September 21st, in reply to the letter of September 18th, says: "Yes; we guarantee you * * for 30 days from Sept. 13, 1869;" showing that the original letter of credit of that date was referred to and was to stand, and that the only effect of the last named letter was simply to permit the issuance of new drafts within the thirty days from September 13th, provided previous drafts were paid.

The Defendant below authorized the drawing of drafts upon shipments of cattle. The drafts issued were in fact upon shipments of hogs, as is shown by the testimony of Mr. Frederick, the drawer of the bills of exchange, and the person in whose favor the letter of credit was given.

The Plaintiff-in-error having never in any way abandoned the original letter of credit, and the Defendant-in-error having failed to comply with its provisions, the Plaintiff-in-error now respectfully insists that in right and justice it is in no way liable thereon.

We come now to consider the case in another aspect. This action rests entirely upon the letter of credit. There is no other matter or thing to connect the Plaintiff-in-error with the drafts mentioned in the declaration, and the Plaintiff-in-error insists that there is not to be found in the Na-

tional Bank Act, or in any other law, authority for national banks to issue letters of credit. The powers of national banks are defined in section eight of the National Currency Act of June 3d, 1864. By that section they have power to exercise "all such incidental powers as shall be necessary to carry on the business of banking; by discounting and negotiating promissory notes, drafts, bills of exchange and other evidences of debt; by receiving deposits; by buying and selling exchange, coin and bullion; by loaning money on personal security; by obtaining, issuing and circulating notes according to the provisions of this Act."

These are the powers granted by law in reference to the business operations of national banks; and among them the power to issue letters of credit is not found, neither is it incidental to any of the powers granted. The national banks can exercise no powers except those conferred by the law of Congress. Being the mere creatures of the law they are dependent upon the powers therein granted, and can exercise none other. As will be seen by a reference to the National Bank Act, all the powers to be exercised by such banks are specifically defined. The power to issue letters of credit is not among those enumerated, nor is it incidental to any of those conferred.

JOHN B. HAWLEY,

Attorney for Plaintiff-in-error.

Supreme Court of the United States.

THE FIRST NATIONAL BANK OF DECATUR, ILL.,

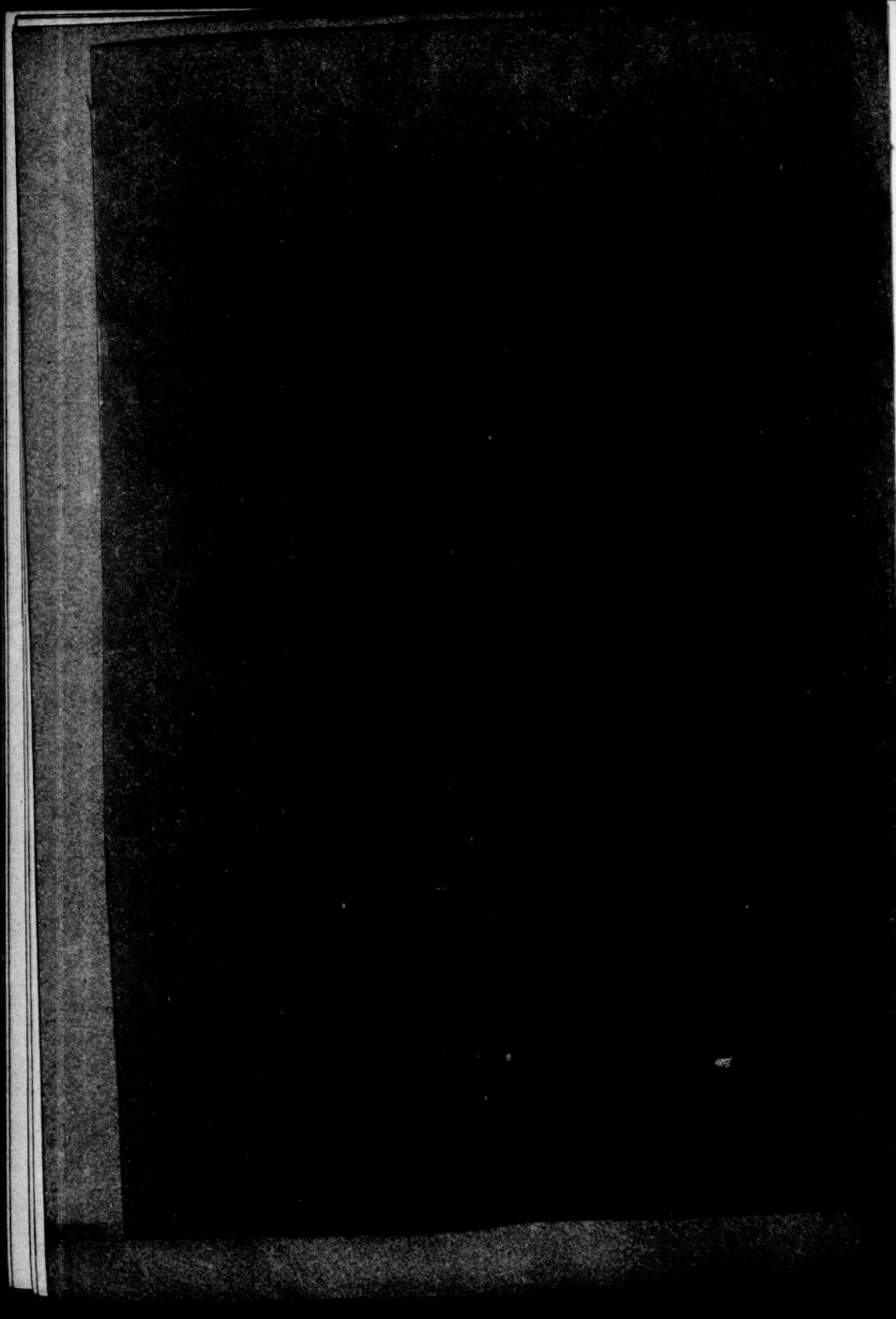
vs.

THE HOME SAVINGS BANK OF ST. LOUIS, MISSOURI.

BRIEF OF APPELLEE.

FRED. W. JONES,
For Appellee.

GEORGETOWN COURIER PRINT.



IN THE SUPREME COURT OF THE UNITED STATES.

THE FIRST NATIONAL BANK OF DECATUR, ILLINOIS,
vs.
THE HOME SAVINGS BANK OF SAINT LOUIS, MISSOURI

No. ~~100~~ 120.

BRIEF OF APPELLEE.

The Appellee was the *St. Louis* correspondent of the Appellant, the latter being a rural bank, having a correspondent in the principal cities or financial centres, upon and through which it could make drafts and collections, and have other and the usual financial accommodations.

The Appellant had among its customers a certain P. E. Frederick, whose business it was to purchase and vend "stock" or "cattle," (using these terms in their common acceptation as including not only beef animals, but hogs, sheep, lambs, deer, and all other animals used for the purpose of food,) and who intended to purchase such "cattle" in St. Louis, and ship them to a business connection of his in Chicago, named J. S. Talmadge, who was to receive the "cattle," make sales thereof, and honor Frederick's drafts given in payment for the same; dividing profits with Frederick, according to an arrangement made between themselves.

"Cattle" were only purchasable for cash on delivery in St. Louis, and Frederick was comparatively a stranger in that city, where he contemplated making such purchases and shipments of cattle. To make these purchases, drafts upon the Appellant were not available, because they could be converted into cash in St. Louis, only with a delay of three or four days; and Frederick's non-acquaintance in St. Louis rendered *his* drafts upon the Appellant unavailable in payment, as owners would not part with their cattle upon the mere individual responsibility of the drawer of a draft, made upon a rural bank, especially when the bank was as entirely unknown at the mart as the drawer himself.

These were the relations and surroundings of the parties on the 13th day of September, A. D. 1869.

On the 13th of September, 1869, the Appellant made and delivered its letter of credit of that date, as follows :—

"CAPITAL PAID IN $100,000.

FIRST NATIONAL BANK OF DECATUR, ILLINOIS.

WM. L. HAMMER, President. J. H. LIVINGSTON, Cashier.

DECATUR, ILL., 9—13, 1869.

H. C. PIERCE, ESQ., Cashier, St. Louis, Mo.

SIR: We beg herewith to accredit with you P. E. Frederick, Esq., whose drafts on shipments of cattle to J. S. Talmadge & Co., Chicago, are herewith guaranteed to the amount of ten thousand dollars for thirty days from date.

Yours respectfully, J. H. LIVINGSTON."

To which the Appellee replied by letter on the 18th of September, 1869, in the following terms, viz :—

"JOSEPH HODGMAN, Pres. HENRY S. PARKER, Vice Pres. H. C. PIERCE, Cashier.

HOME SAVINGS BANK OF ST. LOUIS.

ST. LOUIS, September 18th, 1869.

J. H. LIVINGSTON, ESQ., Cashier.

DEAR SIR: Mr. Frederick has to-day presented your letter of credit for $10,000 of 13th at 30 days. Permit me to inquire, in case his drafts for $10,000 or less on Talmadge are paid, does your letter mean that we may take his draft again up to same amount, and so on for your limit 30 days? That is to say, do you guarantee us for 30 days on Frederick's drafts on Talmadge for $10,000?

Yours respectfully, H. C. PIERCE, Cashier."

And on the 21st of September, 1869, the Appellant responded as follows, viz :—

"CAPITAL PAID IN $100,000.

FIRST NATIONAL BANK OF DECATUR, ILLINOIS.

WM. L. HAMMER, President. J. H. LIVINGSTON, Cashier.

DECATUR, ILL., 9—21, 1869.

H. C. PIERCE, ESQ., Cashier, St. Louis, Mo.

DEAR SIR: Your favor of the 18th is received. Yes, we guarantee you on Frederick's drafts on Talmadge for $10,000 for 30 days from September 13th, 1869.

Yours respectfully, J. H. LIVINGSTON."

The 30 days limited in the last letter being on the eve of expiration, the Appellant renewed and extended its guarantee by the following communication, viz:—

"CAPITAL PAID IN $100,000.

FIRST NATIONAL BANK OF DECATUR, ILLINOIS.

WM. L. HAMMER, President. J. H. LIVINGSTON, Cashier.

DECATUR, ILL., 10—20, 1869.

H. C. PIERCE, ESQ., Cashier, St. Louis, Mo.

DEAR SIR: The guarantee given for Mr. Frederick, please consider extended for 30 days from expiration. Yours, &c.,

J. H. LIVINGSTON."

And again, when the limit fixed by the last letter had expired, the Appellant still further renewed and extended its guarantee by the following letter, dated November 22d, 1869, viz :—

"CAPITAL PAID IN $100,000.

FIRST NATIONAL BANK. DECATUR, ILLINOIS.

WM. L. HAMMER, President. J. H. LIVINGSTON, Cashier.

DECATUR, ILL., 11—22, 1869.

L. H. PIERCE, ESQ., Cashier Home Savings Bank, St. Louis, Mo.

SIR: The letter of credit given you for Mr. Frederick is hereby extended for thirty days from expiration last date. Respectfully,

J. H. LIVINGSTON, Cashier."

The above were the only communications which took place between the Appellant and Appellee, (Pierce's testimony, Record, p. 25,) and the two drafts sued upon, (one for $4,000 and the other for $3,650,) were made by Frederick and paid to him by the Appellee on the 10th of December, 1869. (Record, pp. 21, 22.)

POINTS.

1. It is submitted that these letters (and drafts) taken together, (even including that of Sept 13th, 1869, which may well be excluded, as will be seen hereafter,) make up a case of commercial guarantee, in which the liability of the guarantor is *beyond controversy*. They were intended by the Appellant to give credit to Frederick. The Appellant is bound, by every principle of moral rectitude and good faith, to fulfil those expectations which it thus raised, and which induced the Appellee to part with its money The testimony is clear, that the credit was given or money paid on the faith of these letters.

The Appellants, by a very narrow and contracted construction of the dealings between the parties, contend, that the only contract of guarantee which they entered into, was its own letter of September 13th, 1869; and that as this letter by its terms limited the drafts which they were to guarantee, to such as might be made on "shipments of CATTLE;" and as the proof, by the maker of the drafts, was, that the drafts sued upon were made upon shipments of HOGS; that the guarantors are discharged from liability for the payment of these drafts, and this notwithstanding its letter of Sept. 21st, 1869, and the renewals of the guarantee, by its letters of Oct. 20th, 1869, and Nov. 22d, 1869; and that the drafts sued upon were made on the 10th of Dec., 1869. The mere statement of this proposition, looking to

the nature of the transaction between the parties, is believed to be a sufficient answer to it.

2. The Appellee could recover upon the common counts on all the evidence adduced in the case.

Appellee, in paying Frederick's drafts upon Talmadge, was simply and only extending an act of accommodation to Appellant, upon Appellant's request, through Frederick, who must be considered the agent of the *Appellant* to transact the business and receive the accommodation. He was certainly no agent of the Appellee; and his failure to draw upon shipments of "cattle" was the Appellant's own default, for which the Appellee is in no wise responsible; and the mere payment of the money by the Appellee on the drafts raised a debt against the Appellant.

1 Bell Comm. 5th Ed. 371, cited in Bouvier's Dict. tit "*Letters of Credit*." *Laurason* vs. *Mason* 3 Cranch, 492.

The letter of Appellant dated Sept. 13th, uses the words,—"we beg here with to *accredit* with you P. E. Frederick;" and the last communication of Nov 22d uses the term "letter of credit;" and giving to these expressions the precise significance of a "letter of credit," (with the liability universally held by all the decisions, that is assumed by the maker of such instruments.) the Appellee could recover upon the common counts for money paid, &c., &c.

3. The Appellant attaches such importance to the meaning of the word "cattle," it may be well to ascertain its true meaning.

"Cattle" is said by Webster to be derived from the Norman *catal*, *chastel*, and *chatters*, meaning goods, commodities or movables; and is defined by Webster as, "Beasts or quadrupeds in general, serving for tillage or other labor, and for *food for man*. In its primary sense, the word includes camels, horses, asses, all the varieties of domesticated horn beasts or the bovine genus, sheep of all kinds, and goats and perhaps *swine*. In this general sense it is constantly used in the Scriptures. See Job, ch. 1, verse 2. Webster's Dict. tit. *Cattle*.

Worcester, the more modern lexicographer, gives the derivations of cattle as from the Norman-French, *Catal*, movables; Dutch *Kateylen* or Chattels, and *Kateelen* or Cattle, and defines the word as

"A collective name for domestic quadrupeds, including the bovine tribe, also horses, asses, mules, sheep, goats and *swine;* but especially applied to bulls, oxen, cows, and their young. *Worcester's Dict. tit. Cattle.*

But the word "cattle" has received judicial construction and definition and is held to include not only "pigs," but horses, mares, colts, sheep, and even "asses," and this in criminal cases, where a strictness of construction in favor of life and liberty invariably prevails. The statute of 22 & 23, Car. 2, Ch. 7, prohibited the maiming or killing any "horses, sheep, or other cattle;" the statute of 9 Geo. 1, Ch. 22, which was held as extending and enlarging the Stat. of Car. 2, used the word "cattle" only. Yet in *Rex* vs. *Chappel*, (Russ & Ryan, Crim. Cas. 77,) upon a conviction for poisoning "pigs" where the point was saved, whether pigs were cattle within the act, the Judges held that they were; and in *Rex* vs. *Whitney*, Mood. Crim. Cases 3, the point was saved, whether asses were "cattle" within the act, and the Judges, (eleven being present,) held that they were. In *Paty's* case, 2 W Blacks, 721, "horses" were held to be "cattle" within the meaning of the act. (*Vide* S. C. 1 Leach Cr Cases 72,) and so were "geldings" in *Rex* vs. *Mott* 2 East Pl. Cr. 1075; 2 East Pl. Cr. 1074–6.

At the risk of being tedious upon this point, it is submitted that the words "of cattle" were words of description only, and formed no part of the guarantee, inasmuch as neither in its letter of Sept. 21st, 1869, (which is the real guarantee sued upon,) nor in its subsequent letters does the Appellant refer to or mention cattle, nor any other property for which the drafts were to be made, nor was it important to either party, for what the drafts were given. The guarantee of September 21st, guarantees "Frederick's drafts on Talmadge," and not until this, and the two renewals or extensions of the guarantee made therein were received, were the drafts that are sued upon, made by Frederick and the money advanced thereon by the Appellee.

Suppose Frederick had shipped "beeves" to the amount of $2000; "hogs" to the amount of $2000; calves, or veal, to the amount of $1000; deer or venison to the amount of $1000; and sheep to the amount of $1650, (making the sum of the drafts $7650.) can it be supposed that the Appellant's liability would be limited to the $2000, the amount of the shipment of the "beeves," for this is the narrow and restricted meaning of the word "cattle" which the Appellant seeks to establish? Was that the *intention* of the Appellant in its guaranty of September 21st, 1869? Can it be believed that such was its intention?

Are not the words "of cattle" words of description only? and is not the

case within the rule laid down in *Smith* vs. *Morgan*, 3 Devereux N. C. R., 511 ? In this case Morgan assigned " *the note and judgment* against Henry and John Wilkes, &c.," to plaintiff, and guaranteed " that the aforesaid note and judgment " was " good." It appeared that the note was the joint note of Henry and John Wilkes, and that a judgment had been entered upon the note against Henry Wilkes only *Held*, that although there could not be a note and judgment against both Henry and John Wilkes for the same debt at the same time, especially if the note on which the judgment is obtained precede the judgment as in this case, when the note was merged in the judgment, that the words " note and judgment " were words of description only and no part of the guarantee.

4. But it is insisted by the Appellee that it is wholly unimportant to what use the money was applied, inasmuch as the Appellee is entitled to recover upon the guarantee of September 21st and its renewals.

This Court, in *Douglass* vs. *Reynolds*, 7 Peters, 122, have said, " Every instrument of this sort ought to receive a fair and reasonable interpretation according to the true import of its terms," and in *Dick* vs. *Lee*, 10 Peters, 493, " A guarantee is a mercantile instrument, and to be construed according to what is fairly to be presumed to have been the understanding of the parties, without any strict technical nicety."

In *Bell* vs. *Bruen*, 1 Howard R. p. 186, this Court say : " Letters of guarantee are usually written by merchants : rarely with caution and scarcely ever with precision ; they refer in most cases, as in the present, to various circumstances and extensive commercial dealings in the briefest and most casual manner, without any regard to form, leaving much to inference, and their meaning open to ascertainment from extrinsic circumstances and facts accompanying the transaction, without referring to which, they could rarely be properly understood by merchants or by Courts of Justice." * * *

" We think the Court should adopt the construction which, under all the circumstances of the case, ascribes the most reasonable, probable and natural conduct to the parties." And on p. 187, " The presumption is of course to be ascertained from the facts and circumstances accompanying the entire transaction. We hold these to be the proper rules of interpretation applicable to the letter before us."

In *Laurence* vs. *McCalmont*, 2 Howard's R. 449, this Court have said : " We have no difficulty whatsoever in saying that instruments of this sort,

(letters of guarantee,) ought to receive a liberal interpretation. By a liberal interpretation we do not mean that the words should be forced out of their natural meaning, but simply that the words should receive a fair and reasonable interpretation, so as to attain the objects for which the instrument is designed, and the purposes to which it is applied. We should never forget, that letters of guarantee are commercial instruments, generally drawn up by merchants in brief language, sometimes inartificial and often loose in their structure and form, and to construe the words of such instruments with a nice and technical care would not only defeat the intentions of the parties, but render them too unsafe a basis to rely on for extensive credits, so often sought in the present active business of commerce throughout the world. The remarks made by this Court in *Bell* vs *Bruen*, 1 How. R., 169-186, meet our entire approbation." Vide also C. J. Marshall, in *Laurason* vs. *Mason*, 3 Cranch, 492.

In the light of these decisions the letter of September 13th, 1869, which was only an overture to guaranty, and never accepted, cannot be considered any more than a preliminary negotiation, resulting in the letter of September 21st, 1869, which last, with its renewals of October 20th and November 22d, are the guarantees relied upon in this suit. It cannot be seriously urged that Appellant considered it otherwise, in view of the fact that the two renewals bear date nearly the same day in the month—the original guaranty sued upon being for thirty days and dated September 21st, and the two renewals each for 30 days, bearing date respectively October 20th, and November 22d

5 No reference to the plea of incapacity on the part of the Appellant to make the contract was intended to be made. Inasmuch as Appellant makes the point, however, and seeks to "take advantage of its own wrong"-doing, it may be well enough to say:

I. Issuing "letters of credit," authorizing "drafts upon itself," and guaranteeing "commercial negotiable paper" are quite as incidental to the "banking business" as receiving deposits; and this proposition is too obvious, to require any enforcement by citation of authorities.

II Even if it were not, this Court have said—

"If the contract can be valid under any circumstance, an innocent party in such a case has a right to presume their existence, (*i. e.*, the necessary powers and their regular exercise,) and the corporation is estopped to deny them." * * * *

"The principle has become axiomatic in the law of corporations, and by no tribunal has it been applied with more firmness and vigor than by this Court."

"Corporations are liable for every wrong of which they are guilty, and in such cases the doctrine of *ultra vires* has no application." *Merchants' Bank* vs. *State Bank*, 10 Wall, R. 644–5–6, and authorities there cited

FRED. W. JONES,

Counsel for Appellee.